TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 132

THE STEAMBOAT SUFFOLK COUNTY, HER TACKLE, &c., THE EAST RIVER FERRY COMPANY, CLAIMANTS, APPELLANTS.

vs.

CHARLES E. JAYNES, JOHN SCHENCK, WILLIAM H. CRANSTON, LEWIS L. DAVIS, EDWARD N. SMITH, AND SAMUEL G. FAIRCHILD.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED DECEMBER 9, 1847.

SUPREME COURT OF THE UNITED STATES.

No. 340.

THE STEAMBOAT SUFFOLK COUNTY, HER TACKLE, &c., THE EAST RIVER FERRY COMPANY, CLAIMANTS, APPELLANTS,

vs.

CHARLES E. JAYNES, JOHN SCHENCK, WILLIAM H. CRANSTON, LEWIS L. DAVIS, EDWARD N. SMITH, AND SAMUEL G. FAIRCHILD.

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A UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, Kenneth G. White, clerk of the Circuit Court of the United States of America for the southern district of New York, in the second circuit, do hereby certify that the foregoing pages, numbered from one to 154 inclusive, contain a true and complete transcript of the record and proceedings had in said court, in the case of Charles E. Jayne, &c., against The St'boat Suffolk County, her tackle, &c., as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this 5th day of Dec'r, in the year of our Lord one thousand eight hundred and sixty-eight, and of the independence of the said United States the ninety-third.

KENNETH G. WHITE, *Clerk.*

1 At a stated term of the District Court of the United States of America for the southern district of New York, held at the United States court-rooms, in the city of New York, on Tuesday, the second day of April, in the year of our Lord one thousand eight hundred and sixty-seven.

Present: The Honorable Samuel R. Betts, district judge.

CHARLES E. JAYNE *& al.*
v.
THE STEAM FERRYBOAT SUFFOLK COUNTY, her tackle, &c.

MAY 5, 1864.

The libellants file their libel in the words and figures following, to wit:

To the Honorable Samuel R. Betts, judge of the District Court of the United States for the southern district of New York, in admiralty:

The libel of Charles E. Jayne, John Schenck, William H. Cramton, Lewis S. Davis and Edward N. Smith, of the city of New York, and Samuel G. Fairchild, of Keyport, New Jersey, owners of the steam tug-boat "Joseph Baker" against the steam ferry-boat "Suffolk County," her tackle, apparel, furniture and machinery, and against all persons intervening for their interests therein, in a cause of collision, civil and maritime, alleges as follows:

1st. Your libellants allege that they are the sole and only owners of the said steam tug-boat Joseph Baker, and that they em-
3 ploy her in the business of towing vessels in and about the harbor of New York, or up the North river, or through Long Island sound, or in divers such other waters as the business of towing may demand; that the said boat is propelled entirely by steam, and is of the burthen of about seventy-two tons. That the said

steam ferry-boat Suffolk County was, at the time of the collision hereinafter mentioned and set forth, engaged in plying as a ferry-boat in the East river, between the slip at the foot of James st., in the city of New York, and a place called Hunter's Point, on the shores of Long Island, and was also propelled entirely by steam.

2d. That on the morning of the 27th day of Feb'y, 1864, at about the hour of seven and one-half o'cl'k, the boat of your libellants was proceeding up the East River in the pursuit of her regular business, and was steering about east, being nearer to the New York than to the Brooklyn shore, and with plenty of room on either side of the vessel to pass. That the weather was sufficiently clear
4 to permit vessels to be seen at any reasonable distance, and that at said time the river was almost clear of vessels, and there was no impediment to the navigation thereof. That the boat of your libellants was tight, strong and staunch, properly manned and equipped, with a good pilot in command, and a sufficient look-out on deck, and with her crew properly stationed. That the tide had just begun to flood, and was running with its usual strength in the same direction with the boat of your libellants.

3d. That at about the time mentioned in the preceding article the said ferry-boat Suffolk County was running on one of her regular trips from James slip to Hunter's Point aforesaid; that she is a much faster boat than that of your libellants and much greater in dimensions. That she was astern of the boat of your libellants as they came up by the foot of Jackson st., about one hundred and fifty to two
5 hundred feet, and somewhat on the in or N. Y. side of her, and had plenty of room to have passed on either side. That first after passing the foot of Jackson st. the channel rounds a little towards the north, and the boat of your libellants, pursuing the regular channel, gradually rounded with it, so that she was steering at the time of the collision hereinafter set forth upon a course not precisely parallel with that of the Suffolk County, but at a slight angle therewith.

4th. That the position of the boats being as in said last article set forth, the said boat Suffolk County, without making any signal by blowing her whistle or otherwise, came on at full speed and ran into and struck the boat of your libellants a glancing blow upon the port side of her stern, about opposite to her bitts and her guard, running over and upon the deck of the boat of your libellants, struck against and badly damaged the port bitts, and thence gliding and glancing forward, struck against and carried away the house on the
6 deck of the boat of your libellants, and thence still glancing on and raking forward, struck and turned over the engine of the boat of your libellants, and then brought up.

5th. That the effect of the collision so set forth was to push the stern of the boat of your libellants somewhat in the same direction that the said Suffolk County was steering at the time of the said collision, and to bring the bow of the boat of your libellants around towards the New York shore, so that, with the impetus of both boats pursuing its mathematical projection, the bows of both boats finally pointed in towards the New York shore.

6th. Your libellants allege that the said collision was brought about entirely by the negligence and misconduct of the pilot and mariners in command of the said ferry-boat Suffolk County, in that she did not signal the boat of your libellants, nor keep at a proper distance from her, nor attempt to pass on the outside, but
7 pursued her course blindly and recklessly and at full speed, failing to stop or reverse her, engines until she had struck the boat of your libellants. That the pilot in charge of the boat of your libellants, with her mariners, did everything in their power to avoid the said collision, and that the same was brought about entirely through the misconduct and fault of those in charge of the said boat Suffolk County.

7th. That by reason of the said fault and misconduct the said libellants have been obliged to and have expended in repairing the damage done to their said boat the sum of thirteen hundred and forty-eight dollars and forty-nine cents, and have further suffered damages by the detention of said boat, by way of demurrage, in the sum of one thousand dollars, making the total damage by them sustained by reason of said collision the sum of two thousand three hundred and forty-eight dollars and forty-nine cents, which sum with interest they claim to recover ag'st said ferry-boat "Suffolk County."

8th. That all and singular the premises are true and within
8 the admiralty jurisdiction of this honorable court, and that the said ferry-boat Suffolk County is now in the port of New York and within the jurisdiction of this court.

Wherfore the libellants pray that process in due form of law, according to the course and practice of this hon. court in cases of admiralty and maritime jurisdiction, may issue ag'st the steam ferry-boat Suffolk Co., her tackle, apparel, machinery and furniture, and that all persons claiming any right or interest therein may be cited to appear and answer all and singular the matters aforesaid, and that this honorable court would be pleased to decree payment of the sum of two thousand three hundred and forty-eight dollars and forty-nine cents, the damages as aforesaid, with interest and costs, and that the said vessel may be condemned and sold to pay the same, and that said libellants may have such other and further relief in the premises as in law and justice they may be entitled to receive.

9 CHAS. E. JAYNE.
TOWNSEN SCUDDER,
Lib'l's Proctor.

Sworn to before me this 5th day May, 1864.
JOHN A. OSBORN, *U. S. Comm'r.*

[5 ct int. rev. stamp cancelled]

Endorsed: 18—219. U. S. Dist. Court. Chas. E. Jayne & al v. The Steam Ferry-boat Suffolk Co., her tackle, &c. Libel. Town. Scudder, p. for lib'l'ts. Filed May 5, 1864.

10

11 To the Honorable Samuel R. Betts, judge of the District Court of the United States for the southern district of New York:

The answer of the East River Ferry Company, owners of the steam ferry-boat Suffolk County, her tackle, &c., to the libel of Charles E. Jayne and others, respectfully shows:

First. The [the] claimants and respondents have duly intervened and claimed said ferry-boat, and the same has been on stipulation duly delivered.

Second. That as to the matters stated in the first paragraph or article of the libel the claimants are ignorant and deny the same, except as herein stated, but allege that both the said tug and said ferry-boat were owned and employed in the internal commerce of the State of New York and on the waters thereof at the time of the collision, and respondents admit that the said steamboat "Suffolk County" was engaged on a ferry stated in the libel.

Third. That the respondents and claimants admit, that about the hour and on the day stated in the libel the said steamboat "Joseph Baker" and the said steam ferry-boat "Suffolk County," the latter in the course of her half-hour trips, (but on what business the said "Joseph Baker" was the claimants are ignorant,) were proceeding in the East river towards the eastward.

12 Fourth. That the claimants admit that on the said morning of the 27th day of February, 1864, at about the hour stated in the libel of complain't, the said "Joseph Baker" was proceeding up the East river, but in what pursuit or employment respondents do not know, the said steam ferry-boat "Suffolk County" proceeding up or to the eastward in said river, at a faster rate of speed than the steamer "Joseph Baker," and having room to pass between her and the New York side, and that being proper in the then state of the tide, took the said New York of the said "Joseph Baker," and was proceeding so up or to east and about reaching, or had nearly so reached said "Joseph Baker," when the said steamer "Joseph Baker" was steered to the New York side and across the track of the said steamer "Suffolk County," and that although those on board the said "Suffolk County" did all in their power, the two vessels came together, and that as to all the statements in the second paragraph or article of the libel not herein admitted, respondents deny the same. That there was abundant room and no obstacle in the way to prevent the said boat "Joseph Baker" from keeping on her proper course and direction.

Fifth. That these claimants and respondents further admit that at the time stated in the third article or paragraph of the libel, the said steam ferry-boat "Suffolk County" was on one of her usual

13 and regular trips from James slip to Hunter's Point aforesaid; that she is a faster boat than the libellants the "Joseph Baker," and of larger dimensions; and further that she was to the westward of the said steamboat "Joseph Baker," (not astern,) as the boats

went up the East river about Jackson street, and to the New York side sufficient to clear her in a seamanlike manner, and had room to pass on that side, the whole river then being channel way, and should have cleared said "Joseph Baker" but for such sheers, and that to all other matters stated in said third article or paragraph claimants deny the same.

Sixth. That the claimants and respondents, further answering, deny the statements in the fourth article of the libel, and allege that in fact the said steamer ferry-boat Suffolk County was keeping on her regular course at a moderate rate of speed. and that the said steamer "Joseph Baker" sheered on to the track and course of the said "Suffolk County," and without any notice, signal or intimation, and struck the guard side of the "Suffolk County," and before the vessel could be stopped the said steamboat "Joseph Baker" sustained some injury, but what the claimants are ignorant, and leave libellants to make such proof as they may be advised.

Seventh. That the claimants and respondents, further answering, say that they deny the statements in the fifth article of the libel,
14 and allege that the sheer and blow of the tug was such as to force the bows of the said two boats towards the New York side.

Eight. That the claimants and respondents, further answering. say that they deny the statements in the sixth article or paragraph of the libel and each of them; and allege that the collision occurred solely through the fault, carelessness and mismanagement of those on board the said steamboat "Joseph Baker," in this: when they kew the position of the claimant's boat, (and knowing that she was proceeding faster,) attempting to suddenly sheer across the bow and course of the said steam ferry-boat "Suffolk County," when the said "Joseph Baker" had more than half the river on which to keep away from the course of the said "Suffolk County," and in giving no notice or signal whatever of any such intent to sheer; that such sheer was made at or about off street, New York, and that in so doing the parties on the "Joseph Baker" acted recklessly and without any care or caution; that there said boat was not properly manned.

Ninth. That the claimant and respondents, further answering, say that as to what repairs the libellants have made or caused to have made on said vessel, or what sum or sums they have expended therefor, or wether they have expended any amount, or what dam-
ages were done to said boat by said collision, or wether the
15 said boat was detained, the respondents having no knowledge, cannot admit, and therefore deny the statements in the seventh article of the libel in regard thereto; but they further answering say, that if any such damage was caused by the collision, or the libellants compelled to make any repairs or pay, lay out or expend any monies, the same was wholly in consequence of the wrongful acts, negligence and want of care and skill of the persons in charge of the said "Joseph Baker," and was in no way the result of any fault, negligence or want of care and skill of those on board the said steamboat "Suffolk County;" and the claimants deny that they are liable or responsible for any sum whatever.

Tenth. Claimants and respondents deny that this court has any jurisdiction whatever over the matters herein, or that the same are within the jurisdiction of this court.

Eleventh. That all and singular the premises and statements herein are true, and the statements of the libel, in all respects, different therefrom or not herein admitted are untrue, except the claimants admit that said ferry-boat at the time of the commencement of this suit was in the southern district of New York.

Wherefore claimants pray that this hororable court would be pleased to announce against the said libellants, and to order and decree that the said libel may be dismissed with costs, to the claimants to be taxed, and for such further or other order in the premises as
16 may be just.

UNITED STATES OF AMERICA,
Southern District of New York:

John Berry, of said district, being duly sworn, says that the claimants herein are a corporation created under the laws of the State of New York; that the deponent is the secretary of said corporation, and duly authorized to swear to this answer; that the foregoing answer is true to the best of this deponent's knowledge, information and belief; that he has heard the said answer read and knows the contents thereof.

[SEAL.] JNO. BERRY.

Sworn to before me this 20th day of February, 1865.

FREDERICK BALL,
Notary Public.

[U. S. 5-c. int. rev. stamp.]

Endorsed: 18-269. U. S. District Court, so. dist. of N. Y. The ferry-boat "Suffolk County," East River Ferry Co., claimants, ads. Charles E. Jane and all. Answer. Beebe, Dean & Donohue, for claimants. Filed Feb'y 22nd, 1865.

17 At a stated term of the Dist. Court of the United States of America for the southern district of New York, in the second circuit. held at the City Hall, in the city of New York, on Monday, the 18th day of Dec'r, in the year of our Lord one thousand eight hundred and sixty-five.

Present: The Honorable Sam'l R. Betts, dist. judge.

C. E. JANE *et al.*
v.
THE STEAM FERRY-BOAT SUFFOLK CO., HER tackle, &c.

This cause having come on for hearing in its order on the day calendar—

Ordered hearing.

Pleadings read.
Evidence for lib'l'nts: W. H. Mead sworn.
Cause adj'd to 11 a. m. to-morrow.

TUESDAY, *Dec.* 19.

Cause resumed.
Evidence for libel'nts:
James Cunningham, sworn.
Fred'k Ellis, "
Otis Judson, "
David A. Hawkins, "
Cha's C. Knapp, "
John Schenck, "
Diagram, ex. A, put in evidence.
Evidence for cl'mts:
Gilbert H. Barker, sworn.
Diagram of collision, ex. B, put in evidence by lib'l'nts on cross-ex.
18 Cause adj'd.

WEDNESDAY, *Dec.* 20.

Cause resumed.
Evidence for cl'm'ts:
Joseph H. Hill, sworn.
William Whitlemore, "
Daniel McYell, "
Gilbert Barker, jr., "
Evidence for libellants:
[Evidence for libellants:]
Engineer's diagram, ex. C, put in ev.
Mr. Barker, jr., " D, " " "
Wm. H. Mead, recalled.
Evidence for cl'm'ts:
Wm. Freestone, sworn.
Evidence closed.
Mr. Donohue argues for the cl'm'ts.
Mr. Scudder " " " lib'l'nts.

C. A. V.

19 Mr. Scudder read the libel.
Mr. Donohue read the answer.

William H. Mead, called for the libellants, being duly sworn, was examined by Mr. Scudder.

Q. Do you know the libellants?
A. I do, sir.
Q. Do you know the tug-boat Joseph Baker?
A. I do, sir.
Q. Were you employed on her in Feb'y, 1866?

A. I was pilot of her at that time.
Q. Were you on board of her at the time of the collision?
A. I was.
Q. In what capacity?
A. As pilot.
Q. How large a boat is she?
A. She is a propeller tug; I do not know her exact length—about 80 feet, I should think.
Q. And about how much beam?
A. About 17 feet, I should judge.
Q. How high is she out of the water?
A. I should think about 4 or 5 feet, I cannot tell; I never measured it.

20 Q. Were you present at the time of this collision?
A. I was steering the boat Joseph Baker.

Q. Where were you?
A. In the pilot-house, forward.
Q. The Joseph Baker is a propeller?
A. Yes, sir.
Q. What business was she used in at that time?
A. We were towing vessels wherever we could get a job; at that time we had nothing in tow; we towed from New York and Brooklyn up the sound, the North river and wherever we could get a job
Q. Do you recollect the day of the month this collision took place?
A. Feb'y 27th, 1864.
Q. Where had you come from that morning?
A. From Montague st., Brooklyn, to go to 14th st., New York.
Q. How far had you proceeded when you discovered the Suffolk County?
A. I was about a mile from where I started from, or thereabouts.

Q. What was the condition of the weather at that time?
21 A. The weather was clear and pleasant.
Q. How was the tide running?

A. The tide had been running flood, I should think, very near an hour.
Q. Running in the same direction you were going?
A. Yes, sir.
Q. Were you going upon the New York or Brooklyn side?
A. I was about one-third the distance from the New York shore; that is about one-third the width of the river from the N. Y. shore.
Q. How was the river as to vessels?
A. There were no vessels in the way whatever.
Q. How far could you see distinctly at that time in the morning?
A. I could see the Battery plainly.
Q. It was broad daylight enough to distinguish things?
A. Yes, sir; as light as it is in this room at the present time.
Q. When did you first see the Suffolk County?

A. The first intimation I had was, my deck hand ran for-
22 ward and told me the ferry-boat was going to run into us, and the pilot was not steering the boat, (obj. to;) our boat was not then more than one foot from her guard or joining work.

Q. Had you seen the ferry-boat before that?
A. I had not.
Q. Had you heard any whistle?
A. No, sir; there was no whistle sounded in my hearing.
Q. When you looked over to see her how was she running?
A. Running her usual speed, for anything I could see, coming towards me all the time.
Q. Could you see her distinctly from your position on the boat?
A. Yes, sir; at that time she was not 20 or 25 feet from where I stood.
Q. Was she running parallel with your boat?
A. She was running, as near as I can tell, parallel with my boat.
Q. Had you changed your course up to that time?
A. I had not; I had no occasion to.
Q. Will you mark on this map precisely the place where the boats were at the time of the collision?
(Witness marks on map the position of both boats.)
Q. Is it not customary, in the city of New York, for steamers approaching to whistle?
A. It is, sir.
Q. What signals do they give?
A. He should have blown his whistle twice to pass me on the port side, coming up behind me.
Q. And to have passed on the starboard side?
A. He should have blown the whistle once.
Q. Did the ferry-boat strike you?
A. His guard-beams first struck me on the stern, about a foot from the centre, on the port side. The place marked fig. 1 represents the scar made by the Suffolk County on our boat, or very near it.
Q. Where did she next strike you?
A. She struck the bits, the port bits—"fig. 2" represents the place; she did not hit the starboard bits.
Q. Where did she next strike you?
A. She penetrated the joiner work, and penetrated the engine; "fig. 3" represents the position of the engine; she struck the corner of the steam chest on the port side; it broke the engine down; I am not engineer enough to state how much; it broke it off its frame completely, and left us in a helpless condition.
Q. Did the ferry-boat go any further forwards?
A. She glided along a few feet and stopped.
Q. When she first struck you were you not running on nearly parallel courses?
A. Yes, sir; the moment she struck me aft, on the stern, she threw the Baker nearly square across her bow; I was then headed to the N. Y. shore, and the Suffolk County was in about the same position as when she struck me; it did not alter her course at all, being much heavier.
Q. What became of the boats—how did they proceed?
A. We went up about the distance of an ordinary block of buildings from where she struck me before she could back

clear of me; she was trying all the time; before she could stop her way we were up to the foot of Corlear st.

Q. When she backed clear of you how were both boats pointing?

A. She shoved me ahead; my boat went into the eddy; it canted her a little; but he backed and went on his course again as soon as he backed clear of me.

Q. When you looked around at the time you were told the boat was coming into you, could you see the pilot-house of the Suffolk County?

A. I could; I did not see the pilot; I afterwards saw the pilot; I could see the head of the spokes of the steering wheel.

Q. Had there been any one standing at the steering wheel could you have seen him?

A. I could.

Q. Was there any one in the pilot-house at that time?

A. I am not positive whether there was any one there or not; I did not observe any body.

26 Q. How large a boat is the Suffolk County compared with the Baker?

A. I do not know the dimensions of the Suffolk County; she is one of the first-class ferry-boats.

Q. How fast were you going at the time of the collision, tide and all?

A. I should think about 9 miles an hour; I should judge the Suffolk County was going 12 miles, about.

Q. How far should you judge she was on the inside of you, or could you form any estimate, or did you think she was coming directly aft?

A. When I first looked at her she was not directly aft of me; her guard was lapping over me.

Q. Her port or starboard guard?

A. Both ends are alike; it was her starboard guard, as she was running then up to Williamsburgh.

Q. Was there one at all at the wheel when you looked into the pilot-house?

A. I did not see any one at the wheel.

Q. Had you a full view of the wheel-house inside?

27 A. Not a perfect view. I saw a man rise up at the moment she struck me.

Q. Could a man be in the wheel-house directing the wheel without being in your view.

A. No, sir; a man could not stand at the wheel without my seeing him.

Cross-examined.

By Mr. Donohue;

I was pilot of the Baker. I am a licensed pilot; have not got my license here; will bring it; have been on tug-boats about 18 y'rs; had been on the Baker about one year before going on tug. I was at sea 6 or 8 years.

Q. Your recollection is that the first time any part of the Suffolk County hit the Baker you were about off Jackson ferry?

A. Yes, sir; a person standing on the stern of our boat could see up the slip at the time when I first saw the Suffolk County; this was about half past 7 o'c'k in the morning.

Q. That was when your attention was first called to the Suffolk County?

A. Yes, sir.

28 Q. You had not seen her at any time before that?

A. No, sir.

Q. Nor had your attention called to her?

A. No, sir.

Q. And then the Suffolk County was within a point of being in contact with you?

A. When I looked out of the window, aft, to see her coming, she looked to be within about one foot of striking me.

Q. The blow came almost at the same moment?

A. Yes, sir.

Q. That was when she hit you at No. 1?

A. Yes, sir; where the scar is.

Q. Up to that time you had been running parallel with the ends of the wharves?

A. Yes, sir.

Q. And had not made any change of your course for some distance?

A. No, sir, I had not. I had been running on the same course about 4 or 5 blocks.

Q. 800 or 1,000 feet? The blocks are long there?

A. Not more than ordinary length?

29 Q. Any way, you had been steady on that course for some considerable time?

A. Yes, sir.

Q. You had not about this time made any change in your course?

A. I had not.

Q. You had not rounded at all, had you?

A. No, sir; nor attempted to round; the channel does not round there where we were at the time of the collision.

Q. Whatever steering you had done at that time had been without reference at all to the Suffolk County or any other vessel?

A. Yes, sir; running direct.

Q. How many people had you on board of your boat?

A. I think five in all. The deck hand, I cannot recollect his name. I saw him last week, and have been looking for him since, but could not find him. I saw him at a distance.

Q. Was it Cunningham?

A. Yes, sir; the engineer, George Morris and the fireman. I can't tell where the engineer was; his proper place was the en-

30 gine room, as directed by the engineer; there was also a cook.

Q. You spoke of your joiner work; that is what covers the boiler and pilot house?

A. Yes, sir, and also a small cabin here.

Q. It is a pilot house, running from the forward part of the pilot house, which it joins.

A. Yes, sir.

Q. Is the pilot house any wider than the other?

A. No; the same width.

Q. Is that house all the same height?

A. It is, with the exception of the pilot house, which is higher.

Q. Could you look back out of the higher part of the pilot house?

A. Yes, sir; there are windows in the back end.

Q. So that a man standing in the pilot house could, if he saw fit, look back?

A. Yes, sir; that is what the windows are put there for.

Q. There are also windows in the side of your house?

A. Yes, sir.

Q. And you do not recollect having looked back for some time before?

31 A. I do not recollect looking back for a few minutes. I often looked back; but in reference to that time I cannot say how long it had been since I looked back.

Q. Was there any one in the pilot-house but yourself?

A. No, sir.

Q. Your attention was first called to the Suffolk County by the deck hand?

A. Yes, sir; the deck hand was then directly alongside of me at the pilot-house; he had ran to me.

Q. What was it first struck the point No. 1?

A. The guard braces, I think they call them; the protection of the hull of the vessel to the outer edge of the guard.

Q. Where did she next strike?

A. The side of the guard struck the bits, two of them standing up, and a cross piece between them; they were aft the house, I think, about 10 feet from the stern.

Q. You did not make the diagram?

A. No, sir; do not know who made it; the guard struck the bits.

Q The third time, where was your vessel touched?

32 A. At that time she went through the joiner work, and partly through the engine, all at one time.

Q. What struck the engine?

A. The bluff of her bow; the ground bow on the starboard corner.

Q. What part of your boat did the hull of the ferry-boat fetch up on, if at all?

A. Her rudder stuck on our wearing pieces, at the same time her guard was all over us.

Q. Take the length of your boat, about what part did her rudder come in contact with?

A. About midships, or a little aft of midships.

Q. Up to the time the ferry-boat struck you she had not changed her course, as I understand?

A. I do not know, of my own knowledge, that she changed her course.

Q. Did you ever call upon the lawyers here, or talk with them about the case, about the time of the collision?

33 A. No, sir; I did not; I am sure of that; I told Mr. Schenck, one of the owners, about the collision; don't recollect particularly speaking to Mr. Payne; to the best of my recollection I told the facts to Mr. Schenck, as I have now; not the same words, but the facts.

Q. Were you any way excited when you saw the ferry-boat coming?

A. I was not.

Q. Did you do anything at all on board your boat; did you either whistle or change your course?

A. I did not; I stepped out of the pilot-house immediately after the collision; the fireman was then on the stern of the vessel. I did not see him until afterwards.

Q. Where does the fire and engine-room open?

A. They both open together on the side of the house.

Q. How far were you from the end of Jackson st. pier or piers as you passed along?

34 A. Out in the river, I should think, 150 or 200 y'ds.

Q. Did you see any other boat or vessel about at the time you came into collision?

A. I did not, except one ferry-boat; she was on the starboard of me, bound down the river, that is the only boat I saw; I think she was a ferry-boat running from south Seventh st., Williamsburg. I believe she was going down; I did not take particular notice of her.

Re-direct.

The men I have named is my usual complement; I have the same number now.

Q. Did any of them see the collision but the deck hand?

A. No one but him that I know of; I have looked for him since I was here the other day, but cannot find him.

Adj'd to 11 o'cl'k to morrow.

35 DEC'R 19TH, 1865.

The court met at 11 o'clock.

James Cunningham, called by the libellants, being duly testified:

Q. What was your business in February, 1864?

A. I was deck hand on board the steam-tug Joseph Baker.

Q. Do you know the ferry-boat Suffolk County?

A. I do.

Q. Were you present at the time of the collision?

A. Yes, sir; to the best of my opinion it was between half-past 7 and 8 o'clock in the morning.

Q. Where was it?

A. Off Jackson street ferry, East river.

Q. Where did you come from and where were you going to?

A. I do not know where we were coming from; we were going up the East river. I do not know exactly the spot we came from.

Q. Where first did you see the Suffolk County that morning?

A. When about seventy-five feet from her.

Q. In what direction from her?

A. We were both steering one way; she was a little on our port hand.

Q. Where were you standing when you saw her?

A. On deck, on the port side.

Q. What part of the deck?

A. Midships.

36 Q. How was the steering, with reference to your course?

A. We were both about on one course, but she was a little on our port hand.

Q. Both on one course?

A. Yes, sir; going one way.

Q. When you first saw her, did you look into her pilot-house?

A. Yes, sir.

Q. Did you see any one at the wheel?

A. No man at the wheel, sir.

Q. If there had been any man at the wheel, could you have seen him?

A. Yes, sir.

Q. What did you do subsequently?

A. I think I looked for a minute and then went forward and told my captain; then she was too close to us.

Q. Did you see her when she struck you?

A. Yes, sir.

Q. Did you subsequently see any one in the pilot-house after you ran forward to see the captain?

A. Afterwards I saw a man in the pilot-house.

Q. When did he show himself?

A. He raised up and put the wheel hard towards me.

Q. Did the ferry-boat strike the tug-boat?

37 A. Yes, sir; she first struck us on the port quarter, aft.

Q. Have you ever seen this diagram before?

A. No, sir; not to know it.

Q. Look at the place marked No. 1, on this diagram, and see if that is about the place she first struck you.

A. Yes, sir; about the place; she then glanced along forwards, and struck next amidships against the engine-house, her guards against the engine-house.

Q. I call your attention to the bits; after striking on the port side of the stern, did she next, in gliding forward, strike on your bits?

(Objected to; admitted, exception.)

A. Yes, sir.

Q. Are the bits here represented by figure 2?

A. Yes, sir.

Q. What did she do to your engine, if anything?

A. She knocked the frame from under it, bent the piston rods and other things I do not know the names of.

Q. How were the bows of the two boats pointed subsequently to the collision?

A. We were going right straight up the river when this boat struck us; the "Baker" a kind of turned her bow round towards the New York shore.

Q. How then was the bow of the ferry-boat pointed?

38 A. It was pointing right up to the river.

Q. Was her course changed at all by the collision?

A. No, sir; not to the best of my opinion.

Q. Was the ferry-boat as fast as your boat, or faster?

A. She was faster.

Q. How did the two boats compare in point of size?

A. The ferry-boat was much larger.

Q. How fast, in your opinion, was the tug-boat running?

A. I cannot state how fast she was running.

Q. How rapidly did the ferry-boat gain upon you?

A. It gained all the time.

Q. So as to be plainly perceptible to the eye?

A. Yes, sir.

Q. Are the guards of the ferry-boat higher than the deck of the "Baker?"

A. Yes, sir; much higher.

Q. How long was it after the collision that the ferry-boat backed out from you?

A. She a kind of shoved us into the dock and then left.

Q. When she left you, which way was her bows pointing?

A. Up the river, the same course.

Q. Straight up the river?

A. Yes, sir.

39 Q. Or towards either side?

A. Straight up the river.

Q. Where did you go to after the collision?

A. To the foot of Montgomery street.

Q. How did the "Baker" get there?

A. The ferry-boat a kind of shoved her in, and she went in herself with headway.

Q. How far is Montgomery street from Jackson street ferry?

A. The next block.

Q. At any time subsequent to the collision did the bow of the "Baker" ever point towards the Brooklyn shore?

A. No, sir.

Cross-examined.

Q. The first you saw of the ferry-boat she was about 75 feet off?

A. Yes, sir.

Q. Do you know the length of your boat?

A. Not exactly; about 75 feet, I think.

Q. Then she was about the length of your off when you first saw her?

A. Yes, sir.

Q. And a little to the port of you?

A. Yes, sir.

Q. You were not at the wheel?

A. No, sir.

Q. You knew nothing about the wheel from the time you first discovered the ferry-boat?

40 A. No, sir.

Q. What had you been doing?

A. I had been taking a heaving line out of the fire room, where it was drying.

Q. Did you discover the ferry-boat when you came out of the fire room?

A. Yes, sir.

Q. Your first discovery of the ferry-boat so near you was as you came out of the fire room?

A. Yes, sir.

Q. Did you think there would be a collision then?

A. Yes, sir.

Q. And you then ran to the captain?

A. Yes, sir.

Q. And then called his attention to this boat?

A. Yes, sir.

Q. Where was the engineer and fireman at this time?

A. The engineer was in the engine room; I do not know where the fireman was.

Q. But your attention was first called to the ferry-boat as you came from the fire room, and then for the first time you saw the boat and thought there would be a collision?

A. Yes, sir.

Q. And you had been up to that time drying the line?

41 A. It had been there all night; I had been taking it out.

Q. How long before that had you gone into the fire room?

A. Only a few minutes.

Q. How long after you started from wherever you did start did you go in there?

A. Not over a minute or so.

Q. Have you any idea what place you were opposite to when you went in there?

A. No, sir.

Q. And of course you had no idea of what course had been taken to get where you were on the river; you did not know how many changes you made to get to that place?

A. No, sir.

Q. So you know whether you had come a straight course, without changing, from the place where you started?

A. I do not know, sir.

Q. Had you kept a straight course from the started up to the place where the collision was?

A. Yes, sir; that I am sure of.

Q. You do not you can be mistaken in that?

A. No, sir.

Q. You do not know the place you started from; but from whatever place you started, you kept a straight course up all the way?

A. Yes, sir.

42 Q. Was there any one, to your knowledge, on the back part of your vessel when you came out of the fire room, except yourself?

A. No, sir; not to my knowledge.

Q. The captain was in the pilot-house?

A. Yes, sir.

Q. Your crew consisted of the captain, engineer, fireman, yourself and the steward?

A. Yes, sir.

Q. Where was the steward?

A. I do not know where he was at that time.

Q. Up to the time you came to the captain you had not been aft of the joiner work?

A. No, sir.

Q. The joiner work is this house on deck which covers the engine room, the fire room, the cabin and pilot house?

A. Yes. sir.

Q. Your recollection is that, as the ferry-boat backed out of you, she headed the same way she had been?

A. Yes, sir.

Q. At the time of the collision occurred you were off Jackson ferry slip?

A. Yes, sir.

Q. When the collision occurred, were you right opposite the slip?

43 A. I do not know, sir, when she struck, as she was a little above the Jackson ferry.

Q. How was the tide?

A. I believe, to the best of my opinion, it was about slack water.

Q. At slack water is there any eddy there?

A. Yes, sir; it rounds about the ferry there. I do not know which way the tide ran at that time.

Q. Your opinion is that it was slack water?

A. Yes, sir.

Q. Were you any way excited?

A. No, sir; not much. I knew the collision was going to be; I knew it was going to come to a collision.

Q. Did not your hallooing to the captain and the first striking of the boats take place almost together?

A. Pretty near.

Q. Very little difference between them?

A. Perhaps a couple of minutes.

Q. How far would your boat run in two minutes?
A. I do not know, sir. Both boats were running.
Q. How far could you have walked in this room from the time you hallooed to the captain until the collision occurred?
A. I do not know, sir.
44 Q. Could you walk across the room?
A. Yes; I guess I could.
Q. You think you could walk across the room between the times?
A. Yes, sir.
Q. Could you walk any more?
A. No; I do not think I could.
Q. You would have to walk that pretty quick?
A. No, sir; not very quick.

Re-direct.

Q. Did any one else see this accident on the Baker except yourself and Captain Meade?
A. Not that I know of?
Q. Was any signal given by the Suffolk County?
A. No, sir.
Q. Were you standing on the port or starboard side?
A. On the port side.

Re-cross.

Q. Did you see any other ferry-boat about there, except the Suffolk County?
A. Yes, sir; a Jackson street boat.
Q. You were looking back?
A. Yes, sir.
Q. And you could not see any other boat to your knowledge?
45 A. I did not to my knowledge. I saw no boat but the Jackson street ferry-boat.
Q. Where was she?
A. Coming from Brooklyn?
Q. On the other side of you?
A. Yes, sir.
Q. Above or below her slip?
A. I do not know exactly.
Q. But she was on the starboard side of you?
A. Yes, sir.
Q. Could you see her as you came out of the fire-room door?
A. No, sir; I saw her afterwards.
Q. Where was she when you first saw her?
A. Close to the New York side, I think.
Q. That was after the collision occurred?
A. Yes, sir.

Frederick Ellis, called by the libellants, being duly sworn, testified:

Q. What is your business?
A. Ferry pilot.
Q. What was your business in February, 1864?
A. I was pilot.
Q. On board what boat?
A. The "Seneca," a Jackson street ferry-boat.
Q. Running from what point?
A. Coming from the Brooklyn slip, Hudson avenue, to Jackson street, New York.
46 Q. Did you see the collision between the "Suffolk County" and the "Joseph Baker?"
A. Yes, sir.
Q. What time in the morning did it take place?
A. It might be about half [half] past 7, or a little before that.
Q. Where were you when you saw it?
A. I was coming out from the slip, about 150 yards out.
Q. How far from the collision?
A. About 300 yards, I think.
Q. Where were you standing on board the Seneca?
A. In the pilot-house.
Q. Had you seen both boats before they came together?
A. Yes, sir; I had to stop for the Rosevelt street boat to pass, and I lay perfectly still, pointing towards these boats. My attention was called to them by their being so close together, and so I stopped until the collision happened.
Q. Did you start before the collision happened?
A. No, sir; not until afterwards.
Q. Describe all you saw; how the boats were running; their respective positions and relative speed.
A. My attention was drawn toward them seeing them so close together; and I did start my boat until I saw what hap-
47 pened. They were going in one direction. I waited for a question [they were going in one direction. I waited for a question] of a minute or so, and saw them come together.
Q. How far from each other were they when you first discovered them?
A. They might have been 20 yards; they could not have been more than that when I first saw them. It was all done in a little while.
Q. Could you see the length of each boat?
A. Yes, sir.
Q. And a space of water between them?
A. Yes, sir; about 20 yards. As they were going the guard of the Hunter's Point boat ran over the stern of the other, and as soon as she hit the joiner work it turned the Baker right across the bow of the Hunter's Point boat, and that he whirled them both round.
Q. Please to describe the position of both boats when you first saw them.

A. These two long marks on the map show about the position. They have got to round the point as they are going up, and the natural tide would turn them if no one was steering them. There is a little curve towards the New York shore.

Q. After the collision took place, what occurred?

48 A. I did not see anything more. I started my boat. I saw nothing, because the Hunter's Point boat hid the others. I started my boat and came across.

Q. At the time when you discovered these boats, and saw them about 20 or 30 yards apart, was the "Suffolk County?" on the Brooklyn or the New York side of the "Baker?"

A. On the New York side a little, as near as I can tell, because they were both sideways to me.

Q. Could you see from stem to stern of each boat?

A. Yes, sir.

Q. At that time was the Baker parallel with her, or at an angle with her, or in what position was she compared with the Suffolk County?

A. The Baker, as I should judge, was a little more on the turn than the other boat, a trifle, as near as I could judge.

Q. Was it enough to be apparent, or were you in doubt about it?

A. I could not tell exactly from where I was.

Q. At that time, could you swear positively, before the collision, that the Baker was not going across the bows of the Suffolk County?

A. Oh, no; she was not going across.

49 Q. Did you hear any whistle or signal given by the Suffolk County?

A. No, sir; there was no whistle given.

Q. Had the Suffolk County stopped or reversed the engines at the time of the collision?

A. Not that I could see.

Q. Could you see her wheels at that time?

A. I did, when she struck.

Q. Were they then in motion?

A. They were in motion then.

Cross-examined.

Q. Your impression about this is, that the collision took place above the New York slip?

A. Going up the river; yes, sir.

Q. What we call the eastward?

A. Yes, sir.

Q. And when the boat began to swing on the curve?

A. Yes, sir; they both began to swing.

Q. You saw them?

A. Yes, sir; I was looking right at them.

Q. You had not paid attention to them until they were near together.

A. No, sir.

Q. And on your attention being directed to them, as you stated on your direct, you supposed they were swinging along round the curve?

50 A. A little round the curve.

Q. You saw them?

A. Yes, sir.

Q. That was your recollection as far as you make it out?

A. Yes, sir.

Q. And you are as distinct about that as you are about the other matters?

A. Yes, sir; I know it.

Q. Leaving our boat out of the question, from what you saw of the Baker, they were coming along here? (Referring to map.)

A. Yes, sir.

(Counsel marks No. 6 on diagram.)

Q. No. 6 would represent the curve the Baker was going round, to the best of your recollection?

A. Not quite so much. These long marks here are the marks, as near as I can tell. You are going too quick.

Q. You left the slip on the Hudson avenue side?

A. Yes, sir.

Q. Which way was the tide running?

A. Running up; flood tide, I called it.

Q. On both sides?

A. Yes, sir.

Q. How far had you got out from the slip?

51 A. As near as I could say, about 100 or 150 yards from the slip.

Q. How far were they from the end of the New York docks?

A. I cannot tell; I should judge about 150 yards, as near as I could see.

Q. This Rosevelt street boat you spoke of, how far was she outside, or was she on a line with them?

A. She was coming from Williamsburgh to New York. She was a little more on the Brooklyn side of the river, so that I had to stop for her. She was on what we call the south side at that point.

Q. How far did she come along down from the Brooklyn shore?

A. She might have been very nearly the middle of the river, a little on the Brooklyn side.

Q. She was on the Brooklyn side?

A. Yes sir.

Q. How far to the south of these boats was she?

A. She was southwest.

Q. How far over towards the Brooklyn shore from them?

A. She was near the middle of the river.

Q. And you think these boats were one-third of the way from the New York side?

A. No, sir; very near it.

52 Q. (Introducing a new map.) I want you to put on this map the turn that you think the boats were on. Were they not a turn when you first saw them?

A. No, sir; they were off the slip when I first saw them.

Q. Did you not swear to-day that when you first had your attention called to them, the boats were on the turn?

A. The boats were on the curve.

Q. You saw no Rosevelt street boat going up?

A. Yes, sir; there was one.

Q. Where was she?

A. I cannot tell whereabouts; I did not take notice enough of her.

Q. Can you tell whether she was astern, or alongside, or ahead of the Baker?

A. I did not take notice.

Q. Can you tell?

A. No, sir.

Q. Was the inside or the outside of the Baker from the New York shore?

A. She was outside; she must have been.

Q. Do you recollect?

A. She was outside.

Q. Did she pass ahead or astern of your boat?

A. Ahead of me.

Q. Was she a larger or a smaller boat than yours?

53 A. A larger boat.

Q. How far did she pass ahead of you?

A. A quarter of a mile ahead of me.

Q. Then these boats were farther off than you from her?

A. No, about the same.

Q. If they were about the same distance, can you say whether she was outside or inside or astern?

A. She was ahead up the river a distance from me.

Q. At the time you saw that Rosevelt street ferry-boat going to the eastward, was she outside or inside of these two boats?

A. She was in the middle of the river, outside; nearest to South 7th street.

Q. Nearest Long Isand shore?

A. Near the middle of the river.

Q. She was a quarter of a mile ahead of you?

A. Yes, sir; she passed me when I was in the slip; that was when I saw her.

Q. Did you see the Baker and Suffolk County until after you came out?

A. No, sir.

Q. Did you see the South 7th street boat that was going up after you came out?

A. No, sir.

Q. Had she passed entirely beyond them before you came out?

A. As near as I can recollect, she had.

54 Q. Up to the time that boat had passed Jackson slip, you had not seen either of the other boats?

A. Before she passed, as I had not seen them; when she passed our ip, I did not see the other boats.

Q. You saw her go to the eastward?

A. Yes, sir.

Q. Up to the time she passed your slip, did you see the Joseph Baker or Suffolk County?

A. No, sir; it was after I started from the slip that I saw these boats; the South 7th street boat, going eastward, had passed my slip before I started out.

Q. How far had she got to the eastward of [of] your slip at the time you first had your attention called to the Suffolk County and Joseph Baker?

A. A quarter of a mile, I think.

Q. Had you rang your bell to go ahead, after stopping for the Rosevelt street boat to pass, until you discovered these boats?

A. No, sir.

Q. How for had she got past you before you saw these two boats?

A. After she passed me I let my boat lie still till I saw the collision.

Q. How far had the South 7th street ferry-boat passed you before you had your attention called to the Suffolk County and Joseph
55 Baker?

A. She had got 100 yards or more before I rang my bell to go ahead.

Q. From the time you stopped for the boat to pass, how far had she got to the south of you before you saw the Baker and Suffolk County?

A. When I started my boat from the Hudson avenue slip and got out into the stream, the South 7th street boat was coming on and I had to stop my engine until she passed; then I took notice of these boats first, and let my boat lie until the collision happened.

Q. Did not these boats heave in sight immediately that the South 7th street boat passed ahead of you?

A. Not exactly; I did not take notice until I lay still and saw the two boats going; I cast my eye over and saw the boats.

Q. Did you cast your eye over and see them just as soon as the other boat passed?

A. Yes, sir.

Q. As the South 7th street passed from in front of you, these boats opened to your view?

A. Yes, sir.

56 Q. And at the time when they first opened to your view, they were how far apart?

A. They might have been 20 yards.

Q. How long after that did the collision take place?

A. Almost immediately.

Q. Which did you suppose was going the fastest?

A. The ferry-boat was going considerably the fastest.

Re-direct.

Q. Have you any interest in this case, one way or the other?
A. No, sir, on neither side; they are all friends to me.
Q. Where did the ferry-boat you stopped for come from?
A. From Williamsburgh side, South 7th street, going to Rosevelt street, New York.
Q. Where did the boat that was going up come from?
A. From Rosevelt street to South 7th st.
Q. Both belonging to the same line?
A. Yes, sir.
Q. At the moment of the collision how far apart were these two ferry-boats, one going up to South 7th street and the other down?
A. They must have been half a mile apart.

57 *Re-cross.*

Q. Did you see the South 7th street boat going to the east at the time of the collision?
A. Yes, sir.
Q. Then you cannot tell how far she was to the eastward at that time?
A. No, sir; because she was going all the time; I could not judge that.
Q. These boats going up presented their starboard sides to you as they went up?
A. Yes, sir.

Otis Judson, called by the libellants, being duly sworn, testified:

Q. Do you know the tug-boat Joseph Baker?
A. Yes, sir.
Q. Do you recollect examining her condition in February, 1864?
A. Yes, sir; I recollect going aboard of her and looking at her. I do not remember the day or month; I think she was lying at the foot of Montgomery street, or Governeur street.
Q. Did you examine the scars on her?
A. I examined the marks on her stern.

58 Q. Look at the diagram and see if mark No. 1 represents about the place where one of the scars was on the stern of the Baker?

A. Yes, sir; and No. 2, the scar on the port bits; No. 3, the engine.
Q. Describe the scar on the stern.
A. The scar on the stern was lengthways of the rail of the boat, and the scar on the bits.
Q. Was it an indentation?
A. It was a scar, a piece of the wood started out.
Q. The wood was not fractured?
A. Fractured so as to leave a mark.
Q. Split?

A. No; gouged out, as if something heavy had gouged it out.

Q. How long was it?

A. I do not know how wide the rail is; it was right across the rail. I suppose the rail is about 10 inches; the scar was lengthwise of the boat, running from the stern towards the bow; there were one or two other scars on her, two or three small scars, where you could see she was chafed.

Q. How did the line of these scars run?

A. Lengthwise; they agreed with the big scar.

Q. And all of them ran from the stern to the bow?

59 A. Yes, sir.

Q. Parallel with a line drawn from the stern to the bow?

A. I cannot call it anything else; so near it that the eye could not discover the difference.

Q. Could that scar have been made by a boat striking the tug-boat in any other way than on a line nearly parallel to a line drawn from the rudder of the stern to the bow?

A. I should think not.

Q. If a boat had struck that tug-boat on the side of the tug-boat, could such a scar as that have been made?

A. I do not see how it could make such a scar if it struck the side. I do not see how a perpendicular blow could make a scar lengthwise.

Q. Can it be possible that a scar with lines running parallel to the line of the boat could have been made by a boat running head on?

A. It could be made with a boat coming head on, provided it had a guard to reach over to make it, but not if one boat fetched up against the other; that scar was made by the guard; it could not make such a scar as that by the main hull, but the guard, head

60 on, would make the same mark, provided the guard was wide enough to overreach. The ferry-boat, by heading head on, could not make this scar, not by heading square head on.

Q. How was the scar on the bits?

A. The scar was on the port side of the bits, I think about 3 or 4 inches from the top of the bits.

Cross-examined.

Q. How far is it from the side of the bit to the side of the house from the port side of the bit to the port side of the joiner work?

A. From $2\frac{1}{2}$ to 3 feet.

Q. Anything passing in a line over this place where you saw the scratch, that travelled in the direction of the scratch, that was able would make it?

A. Anything that would pass over with force sufficient in that direction, would make it.

Q. That is, whether by a collision, or whether by the boat being tied to the dock, or anything passing over it with force enough in that line, would make that mark?

A. Yes, sir.

Q. Did it pass over the grain of the wood or run with the grain of the wood?

A. It passed over the grain of the wood; it is on the round
61 part of the stern, and the wood is always cross-grained there.

Q. Did the grain run inboard or outboard, or along with the boat there?

A. In the stern of the boat the wood may be cross-examined, or they try to get knee timber, so that the grain will run right and the stronger.

Q. Can you tell whether the grain there ran along as the wood work ran, the shape of the boat or across the shape?

A. I do not recollect that precise piece.

(Witness marks on diagram figure 7.)

Q. Figure 7 is the direction in which the mark ran on the rail, to your best recollection?

A. Yes, sir; it may be that it angled a little more inboard than is marked out here.

Q. Are you a shipwright?

A. I am an engineer by profession to the steamboat George O'Vail.

Q. You are not a ship carpenter?

A. No, sir; but I profess to take charge of that part of the work.

Q. You never have been a ship carpenter?

A. No, sir.

62

63 David A. Hawkies, called by the libellants, being duly sworn testified:

Q. What is your business?

A. Ship carpenter and joiner. I have worked at that business for about twenty-five years.

Q. Do you know the tug-boat "Joseph Baker?"

A. Yes, sir.

Q. Did you repair her in February or March, 1864?

A. In March, 1864, after this collision.

Q. Look at this diagram and see if figure No. 1 represents about the place where there was a scar?

A. I think it was closer to the centre than that in proportion. I know Capt. Schenck called my attention to it.

Q. How deep was that scar?

A. At the outside head of the rail it might be one inch deep; but it grew less as it went in.

Q. How wide was it?

A. About the width of the rail; the rail is about 10 inches; that rail is about 18 inches above the deck, it may be 20 inches. I have done repairs on the boat a good while.

Q. What was the appearance of the scar?

A. It was a jagged rough scar, as if the edge of a boat, or
64 some blunt instrument, had been dragged heavily across there.

Q. What, in your judgment, from the appearance of the scar, must have been the line of the propelling force that made that scar?

A. I should judge from the scar that the line was a little on an angle, not exactly on the same line as the keel of the boat.

Q. Could you judge by the seams in the scar how the force that produced that scar must have been coming with reference to the Joseph Baker?

A. I should judge it was a little on an angle, but not much; not so much as that a man looking at the two boats casually would notice the difference, but you could still see that it inclined a little towards the centre of the boat.

Q. Suppose that scar had been made by a colliding boat, could it have been made in that way had the colliding boat struck the Joseph Baker head on?

A. No, sir; it could not be made by striking at right angles.

Q. How must she have struck to have made that scar?

A. I suppose she must have come up a little on her port quarter?

65 Q. Could that scar have been made by her coming up in any other way?

A. I don't see how it could.

Q. What was the condition of the bits?

A. The bits were sprung, but not broken off.

Q. What was the condition of the joiner work round the engine?

A. The joiner work was not completely down so as to lay on the deck.

Q. Could you judge from the appearance of the joiner work how the blow was delivered on that?

A. I should judge a little quartering, nearly aft.

Q. What evidence had you for that opinion?

A. The aft quarter post is 6 inches square, of white oak, and the marks in that were a little more on the aft side of the boat.

Q. How long from the time of the injury to the time you saw it?

A. I don't know. I commenced to repair her on Saturday, the 5th of March, and on the Saturday I saw the injuries; it was a fresh-made mark when I saw it.

Cross-examined.

Q. Your judgment was that it had been done quartering?

A. Yes, sir, a little quartering; not exactly on the true line of the keel.

Q. The exact angle you cannot judge?

A. No, sir; it would be hard to judge.

66 Q. To your mind it was somewhat quartering?

A. Yes, sir.

Q. How wide was the Baker?

A. I should think 16 or 17 feet.

Q. How far from the side of the boat to the joiner work?

A. I should judge not far from 3 feet, but less, if anything, not more; that is, in this corner; she swells out in the centre a little more.

Q. The place where the first blow was struck aft was about the front of the swell here?

A. Pretty nigh the centre; nigher than this represents.

Q. But from the side of the joiner work to the side of the boat was about 3 feet?

A. About 3 feet in that place.

Re-direct.

Q. Was the angle at which this scar or groove was to the keel very slight?

A. Very slight indeed; just enough that you could perceive it.

Q. Do you mean to be understood, when asked if your opinion the blow was struck quartering, that this blow was on the quarter?

A. No, sir.

Q. Do you mean to be understood anything else than that it
67 was on the port quarter of the boat?

A. The port quarter; not a quarter blow; that would be an angle of 36 degrees; this was so slight an angle that I should not judge it to be two degrees; it might have been two degrees; it would be very difficult, on a length of rail 10 inches, to tell what the angle would; but in my judgment it was 2 degrees.

Charles Knapp, called by the libellants, being duly sworn, testified:

Q. What is your business?

A. Engineering.

Q. Do you know the steam-tug Joseph Baker?

A. Yes, sir.

Q. Did you examine some scars on her in February and March, 1864?

A. Yes, sir.

Q. Please to look at the diagram and say if figure 1 represents the relative position of the scar on her?

A. I think it was a little more amidships; more parallel with the keel of the boat.

Q. What was the appearance of the scar?

A. As if cut by some nut or bolt, or some blunt piece of iron.

Q. Was it fresh at the time you examined it?

68 A. Middling fresh.

Q. About how long was it?

A. It was the width of the rail—10 or 11 inches.

Q. From the appearance of the scars could you judge what must have been the course of the body that made it, with reference to the course of the Baker?

A. I should think they were both going pretty nearly one way.

Q. What induced you, from the appearance of the scar, to think they were going one way?

A. From the look of the way the scar was made across the wood and the striking of the bits.

Q. Could a scar like that have been made by any force of a boat striking the Baker head on, at right angles, or near right angles?

A. I do not think it could.

Q. Could that scar have been made in any other way than by a boat coming about parallel with the course of the Baker, and striking her over the stern?

A. I do not see that it could have been made any other way.

Cross-examined.

Q. What is your business?

69 A. Engineer of the steamboat "Sol. Thomas." I think I have been about 6 or 7 months on her; before that I was on the "Uno;" before that I was on the Sol. Thomas. I never have been employed on the Baker.

Q. Did you ever have your attention called to the Baker before this time?

A. I have been on board of her.

Q. Have you had your attention called to her?

A. No, sir.

Q. Who called your attention to her at this time?

A. No one; I was walking round and saw her joiner work knocked in and went to look at her; after I saw her I heard she was in a collision, not before; I heard it from some of the crew of the boat; they did not tell me what the collision had been.

Q. Did any one ever tell you how the collision had taken place?

A. No, sir.

70 John Schenck, called by the libellants, being duly sworn testified:

I am one of the libellants.

(It is admitted that the libellants are the owners.)

Q. When did you first learn of the collision between the Baker and the Suffolk County?

A. About 10 o'clock on the day it occurred; I went to see the Baker the same day; I found her with her engine broken down, and the joiner work partially knocked off.

Q. Did you make this diagram?

A. No, sir.

Q. Did you have it made?

A. No, sir.

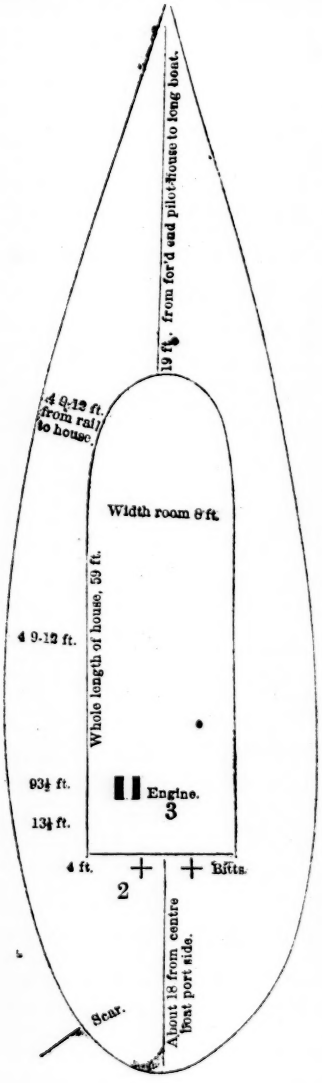
Q. Look at that diagram and see if it is a correct representation of the boat Joseph Baker as to her dimensions?

A. Well that is about as near her shape as you can come to it.

Q. Read the dimensions at the foot of the diagram and see if they are truly stated?

A. I should say they were.

Exhibit A.


19 ft. from for'd end pilot-house to long boat.
4 9-12 ft. from rail to house.
Width room 8 ft.
Whole length of house, 59 ft.
4 9-12 ft.
93½ ft.
13¼ ft.
Engine.
3
4 ft.
2
Bitts.
About 18 from centre boat port side.
Scar.

From the stern to the bills	11	ft.
" " " " house	13½	ft.
" " " " engine	23½	"
Width of house	8	ft.
" from the rail to the house	4 9/12	"
From after end of the house to engine	10	"
From water's edge to deck	2 5/12	"
" deck to top bitt	3 9/12	"
" " " rail	2 6/12	"

72

73 (Counsel for the libellants offers the diagram in evidence; admitted, subject to objection, marked Exhibit A.)

Q. Did you examine the scar on this boat?
A. I did, sir.
Q. Who was with you at the time of the examination?
A. Mr. Hawkins and Mr. Judson were with me.
Q. Did you at any time see Mr. Knapp?
A. Yes, sir.
Q. How came he there?
A. I guess he happened along there; I do know what brought him there.
Q. What was the appearance of this scar?
A. It looked as though some steamer or heavy body had passed over there.
Q. What was the appearance of the scar itself; were there lines running in one direction or another?
A. They were running nearly lengthwise with the boat.
Q. Could a scar of that character have been made by a boat coming at an angle with the line of the Baker?
A. Yes, sir.
Q. You do not understand me; I mean at an angle with the keel of the Baker?
A. No, sir.
74 Q. Coming head on?
A. No, sir.
Q. How must the force that made that scar, whatever it was, have been coming, with reference to the Baker?
(Objected to; admitted; exception.)
A. About the same direction as she was going.
Q. Could that scar have been made by a force coming in any other direction than that?
A. No, sir.
Q. Why could it not have been made except so?
A. Because it would not have run lengthwise with the boat.
Q. You did not see this collision?
A. No, sir.
Q. Had the Suffolk County struck the Baker at an angle of say 20

or 30 degrees with the line of the keel of the Baker could that scar have been made?

(Objected to; admitted; exception.)

A. No, sir; not in that shape.

Q. Did you examine the joiner work?

A. I did.

Q. In what condition was that?

(Objected to; admitted; exception.)

75 A. The after part was all broken to pieces; it was canted ahead and starboard; the top part of it was thrown directly over forward and starboard; nothing to hold it up.

Q. Did you ever hear the pilot of the Suffolk County state anything in your presence concerning the collision?

(Objected to. Excluded.)

Cross-examined.

Q. How far is it from the stern to the bits?

A. About 10 or 12 feet; I cannot say exactly.

Q. How far from the stern to the house?

A. About 14 feet.

Q. How far from the stern to the engine?

A. About 24 feet.

Q. How wide is the house?

A. About 7 feet.

Q. How far from the rail to the house?

A. About 3½ feet amidships; it varies; amidships is the widest part.

Q. How far from the aft end of the house to the engine?

A. About 10 feet.

Q. How long is the boat?

A. 72½ feet.

Q. What is your business?

A. Captain of steam tug-boat.

Q. Have you a boat of your own?

A. Yes; the Olive Branch, at present.

Q. Have you been on her some time?

A. Yes, sir.

(Libellants rests.)

76 Gilbert H. Baker, called by the claimants, being duly sworn, testified:

Q. What is your business?

A. I am pilot; have been 15 years; I first went on the Peck Slip ferry; I am now on the tug-boat Bell.

Q. When did you leave the Suffolk County?

A. In September last.

Q. Were you on board of her the morning of the collision?

A. I was, sir.

Q. In what capacity?

A. As pilot.

Q. From where tc where was your boat bound at the time of the collision?

A. She was bound from the foot of James street to Hunter's Point ferry.

Q. As you went along up did you see the Baker?

A. Yes, sir.

Q. About how long, should you judge, did you first see her before the collision?

A. When I turned out of the slip in New York we were pretty much all together; I was inside, the Peck Slip boat was outside, and the Baker about in the middle; the Baker might have been a little closer to us than the middle.

77 Q. As you went up here by Rutger street, Clinton street, and Jefferson street, what was your course—along the docks or otherwise?

A. It was about an east course.

Q. Was it running parallel up with the end of the docks?

A. Yes, sir.

Q. About how far out were you at the time you went along up by the piers?

A. We were about 150 yards from the dock along there.

Q. As you went along there, and below Jackson street, were you on a line with, or inside, or astern of the Baker?

A. I was on the inside of her.

Q. As you looked up could you or not see whether you were clear of her on a line between her and the dock?

A. Certainly, sir.

Q. How far, if she had kept the course she was on, would you have passed inside of her?

A. About two lengths of his boat, very near.

Q. You were proceeding on the same line?

A. Yes, sir.

Q. This Peck Slip boat was outside of the Baker?

A. Yes, sir; I do not know whether it was the Law or the Washington.

Q. As you went along up what did the Baker do, and what did you do, that caused this collision?

78 A. After I came up to Jackson ferry the Baker was ahead of me; I saw no one on the deck of the Baker; she was about the length of her boat ahead, and one and a half or two lengths outside of me, I should judge; as I came along by Jackson street ferry I rounded my course, as we generally do, swing a little; I saw the Baker giving a rank sheer in towards me; I saw there was going to be a collision of the two boats; I immediately rang my bells all in a heap, and hove my wheel hard to me, to swing my head towards the New York shore; that was all I could do until we came together.

Q. Was the water good between you and the dock?

A. Yes, sir.

Q. The sheer of the Baker was towards you?

A. Yes, sir.

Q. And at the time she made it you say she was how far ahead and how far outside?

A. About a length ahead and 1½ or 2 lengths outside of me when she gave the sheer.

Q. Was there anything you could have done to have prevented that collision?

79 A. No, sir; it was close quarters.

Q. Where did the collision take place?

A. About half way between Jackson street dock and Corlear street dock.

Q. Would there have been any danger of a collision if she had kept her course?

A. No, sir.

Q. Had she kept the same course she was on as she passed the streets below, would there have been any collision or coming together?

A. No, sir.

Q. What part of your boat, and where did you first hit her?

A. As she swung towards me, and I rang my bells to back, as near as I can tell, the part of our boat where we hook on (we have an eye there) brought up against the engine-room door of the Baker; our boat projects out along there.

Q. Had any part of your boat struck her before that?

A. No, sir; the guard struck first, and at that place.

Q. What was the effect on the Baker?

A. As we swung together the Baker's stern swung under our guard and our guard knocked her cabin all on one side, and I

80 suppose burst the steam pipe; there was a quantity of steam flying.

Q. At the time you first saw her there was no one on the deck of the Baker?

A. Previous to coming together, no one that I saw.

Q. Had there been any one prior to that on deck?

A. No, sir; when she made this rank swing, I saw a man running to the pilot house, and then I saw the pilot work his arm as if he was trying to break his sheer to go from me again.

Q. Did you do anything after striking her towards pushing her into the slip?

A. No, sir.

Q. Did she go into the slip?

A. She went to the foot of Corlear slip. We did not stop until she ran under a bark's stern at the foot of Corlear street; then I backed clear of her.

Q. Was there anything you could have done to have prevented that collision?

A. Not that I know of.

Cross-examined.

Q. When you backed clear of the Baker how far were you from the pier?

A. The Baker was up to the bark's stern when we backed clear of her.

81 Q. How far would that make your boat from the pier?

A. It left my boat outside of the bark.

Q. About 60 feet from the bark?

A. I cannot say whether 50 or 60 feet.

Q. Out from the bark would have made the Suffolk County about 50 or 60 f't distance?

A. It might have made it that or less.

Q. Would it have been over that?

A. I do not know.

Q. Would it have been over 100 feet?

A. I cannot say.

Q. Would it have been over 200 feet?

A. I cannot say; I have no opinion; at that time I had something else to look at; it might have been 60 or 50 or 40 feet; to the best of my opinion it was not over 50 feet from the dock when I backed clear of her.

Q. How far were you off in the stream at the time of the collision?

A. It might have been 250, 300 or 400 yards off the dock.

Q. And from the time of the collision until you got clear of the Baker, you went from there very near into the slip, up to within 50 feet of the bark?

A. Yes, sir; the Baker was powerless and my boat was under way, and I had to stop both boats; the putting of my wheel round

82 brought me in; we did not stop until we got up there.

Q. At the time of the collision which way was the Baker's head pointing?

A. She was heading at that time very nigh to where the burned store was, by the c orner of the burned store.

Q. Coe's warehouses?

A. I believe so; at the time we hit together; we came very near them.

Q. When did you first see the Peck slip boat going up the same course with yourself?

A. I noticed that when I came out of the slip myself.

Q. Did you see her before you came out or after?

A. When I turned into the river, I noticed her; I did not pay particular attention to her afterwards.

Q. How far was she off from you then?

A. I cannot say; the Baker was outside of me.

Q. How far outside of you was the Peck slip boat?

A. Four lengths of my boat outside of me; a little astern of me, if anything.

Q. Is not your boat much faster than the Peck slip boat?

A. She is so considered; as a general thing, my boat was smarter than the Peck slip boat.

83 Q. A good deal smarter?

A. She has gone as fast as us.

Q. Could she, at that time, go as fast as your boat?

A. No, sir; I think not.

Q. In what position was the Baker when you first discovered her?

A. Ahead of me, and outside of me. I did not see any alteration in her course unt l she got near where the collision occurred; we were on parallel courses.

Q. How far from James slip to Jackson street ferry?

A. From one-half to ¾ of a mile.

Q. How fast could the Suffolk County go at that time?

A. She could go maybe 10 knots.

Q. She ran in connection with the Long Island railroad?

A. Yes, sir.

Q. What is your running time from James slip to Hunter's Point, your average time?

A. Our running time is a trip an hour.

Q. How long is your running time from James slip to the Long Island railroad, at Hunter's Point?

A. On an ebb tide it is longer than on a flood tide; I do not run by any time table; I make my trips as fast as I can and as safe as I can; we make a trip an hour to meet trains, and if we do not
84 meet them it makes no matter.

Q. Is not your running time 28 minutes from James slip to Hunter's Point?

A. I have gone in less than that, and I have gone in 40 minutes.

Q. Has not that been the average running time?

A. We are often longer.

Q. What is the average time?

A. From 28 to 30 minutes.

Q. You have seen the time table of the Long Island railroad?

(Objected to)

Q. Do you know that the Long Island railroad time table gives you an average of 28 minutes to run from James slip to Hunter's Point?

(Objected to; admitted; exception.)

A. No, sir.

Q. How far is it from James slip to Hunter's Point?

A. I call it 5 miles.

Q. With flood tide in your favor, what is your average time of running?

A. About 28 minutes.

Q. How was the tide this morning?

A. Just the commencement of young flood.

Q. How fast do you think it was running?

A. It was not running half a knot.

Q. How fast were you running, taking the tide in connec-
85 tion with the velocity of your boat?

A. At that time we were not running over 8 knots; we might have been going 8 knots.

Q. You are willing to swear you were not going 10 knots?

A. To the best of my belief, we were; there are times we go faster than others.

Q. But this morning?

A. I do not think we were going over 8 knots an hour.

Q. Have you not just sworn you were going about 10 knots an hour?

A. You asked me, at times, how fast we could go.

Q. Have you not just sworn that on that morning you were going 10 knots?

A. I do not recollect it; if I did, it was a mistake; I understood you to ask me how fast our boat could go, and I said I supposed she she could go 10 knots an hour; I did not say she was going that morning 10 knots.

Q. With a flood tide could that boat make 16 knots an hour?

A. I do not know what the tide has to do with it.

Q. With a strong flood tide running with her, could she make with the tide 16 knots an hour?

A. If she could I never saw her do it.

Q. But you have run from James' slip to Hunter's Point in 20 minutes?

86 A. The boat has gone it in that time with a flood tide; I do not say I have ever done it.

Q. Did you ever see the Baker go?

A. Yes, sir.

Q. She is a propeller?

A. Yes, sir.

Q. What is the tonnage of the Suffolk County?

A. I cannot tell you.

Q. How long over decks?

A. I cannot tell you.

Q. How wide?

A. I cannot tell you.

Q. What cylinder has she got and what stroke?

A. I can't tell; the engineer will know.

Q. How many passengers can she carry?

A. I think I have seen on her some mornings one thousand passengers at train times.

Q. And at the same time wagons, trunks, &c.?

A. Yes, sir.

Q. How far do you judge her guards to be out of the water?

A. I should judge them to be 5 feet out of the water; probably more.

Q. Did you gain at all on the Baker, from the time you left James slip until you came opposite Jackson street ferry?

A. Very little; we gained something; she was a length and a half ahead; and I may have gained half a length; when I turned

87 up the river she was 1½ lengths ahead and 2 lengths outside.

Q. How much had you gained on her at the time you got up to Governeur street?

A. Probably we might have gained a length on her, or less.

Q. Then at that time your bow was even with her stern?

A. Not quite; I do not speak as though she was just a length and a half a head.

Q. At Governeur street how much was she outside of you?

A. Not over half a length; but she was outside of mee.

Q. At that time you were gaining a little on her all the time?

A. A trifle.

Q. And the collision occurred between Jackson s't and Corlear s't?

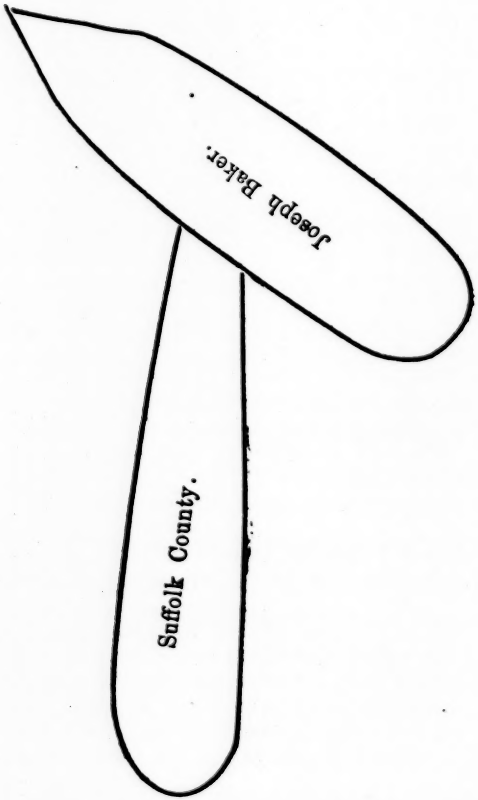
A. That is where she swung towards me; she then slackened her speed when she swung, and I came up.

Q. When she swung towards you, she being a length and a half outside, how did you hit her broadside?

A. The moment she swung to me she lost her way and I gained.

Q. And you struck her square broadside?

88 *Exhibit B.*



89 A. I did not say we struck her square.

Q. Please tell me the exact angle at which the Suffolk County struck the Joseph Baker.

(Witness marks the position of the two vessels on a sheet of paper, which is put in evidence, marked Ex. B.)

Q. Were you in the pilot house constantly from the time you left James slip until the time of the collision?

A. Yes, sir.

Q. Did you have a stove in there?

A. Yes, sir.

Q. Did you have any occasion to fix your fire from the time you left James slip until this collision?

A. No, sir.

Q. Did you have any occasion to do anything to your stove?

A. We have a little damper to the stove, and when we got to the point of the hook, off Jackton st., I shut the damper, just reached over and shut it; it did not take a second to do it; that is all the occasion I had to fix my fire.

Q. How far is the stove from your wheel?

A. About two feet. It is a sugar-loafed stove, with the damper in front, on top; two feet from the floor; I reached over and shut the damper.

90 Q. Had you to stoop down to the top of the damper?

A. I did not stoop, only leaned over the wheel and turned it down.

Q. How long did you take to do it?

A. Only a second; only to lean over.

Q. Is that the only time you lost sight of the Baker?

A. I did not lose sight of her then.

Q. You looked at her when you were shutting the damper?

A. Yes, sir.

Q. Could you see her when you were leaning over to shut the damper?

A. I had only to put my hand on the damper; I knew where it was; I do not recollect taking my eye off the Baker at all.

Q. Can you swear you did not take your eye off the Baker?

A. No, sir; I cannot; but I never lost sight of the hull of the Baker.

Q. Have you not admitted, when Mr. Schenck was present, that you stooped down to do something to your stove, and for a little time you did not see the Baker; and when you looked up, to your surprise, you were right on her, or words to that effect?

A. No, sir; I never admitted anything of the kind; all I admitted was shutting my damper up.

91 Q. Did you admit that in Captain Schenck's presence?

A. No, sir; not to my knowledge. If Captain Schenck made use of an assertion of that kind he was wrong; I never made use of any such assertion to Captain Schenck or any one else.

Q. Did you make some statement of that kind in the presence of Captain Mead, the pilot on deck of the Baker?

A. I do not know him.

Q. Did you make a statement of that kind in the presence of that gentleman? (pointing out Captain Mead.)

A. No, sir; I do not recollect.

Q. Can you swear you did not?

A. To the best of my belief I never spoke any such word as that to either of them.

By the court:

Q. What is the fact?

A. The fact is not so.

Q. At the time you turned to fix your damper how far was the Baker from you?

A. She might have been half her length outside of me.

Q. And how far ahead?

A. We were very near up.

Q. So that your bow about lapped on to her stern?

A. It might have lapped on to her stern.

Q. How long was that before you came together?

92 A. A very short time; it might have been three seconds; the moment she sheered she came over quick together.

Q. It might not have been more than three seconds?

A. I cannot swear to a moment or second of time; to the best of my belief it might have been over three or four second?

Q. Between the time you fixed your damper and the collision?

A. There was no fixing about it, only to shut it.

Q. How long was it from the time of fixing the damper until the time of the collision?

A. I should say it was 4 or 5 seconds.

Q. When you looked up?

A. I did not look up; I had no occasion.

Q. After you had fixed the damper how long before she changed her course?

A. Immediately after I fixed the damper she took this rank sheer, and we were together in almost the time I take to state it.

Q. When you struck the Baker, did you not push her stern in such a way that both swung into the New York shore?

A. She swung in.

Q. Did her bow ever swing away from the New York shore from the time of the collision until you left her?

A. I do not know that she could; she was under our bow,

93 as I placed the two boats together on paper.

Q. From the time of the collision until you left her, her bow never did swing away from the New York shore?

A. Not to my recollection.

Q. Did you touch her stern at all?

A. I do not recollect her stern touching us, unless it was when she swung under our guards, after we came together; then her stern swung to under our guards, and if any damage was done to her bits, it must have been then from our braces.

Q. Did not the Suffolk County really advance up the East river to the moment of backing out from the Baker from the force of the tide and her own velocity?

A. We got right round in under the bark's stern, and when my boat backed the Baker would naturally turn round into the dock.

Q. But you went forwards towards Hunter's Point all the time?

A. Not a great deal, but a trifle, just what room the boats would take in a circle; the tide was but very little.

Q. Mark on this diagram the position the boats were in at the time you backed out after the collision.

A. I do not know that I can; I did not back out until she went in under the bark's stern.

Q. At that time could you place them?

94 A. I do not know that I can; there was a good deal of steam flying.

Q. Looking at the diagram of the boats you have made, was the angle at which the Suffolk County struck the Baker ever a more acute angle while the boats were together?

A. I gave you the position the boats were in when they came together. I do not know what you call by an acute angle.

Q. What I want to know is, after the collision and until the boats separated, was the angle more acute?

A. As the Baker went round our bow, I think we did swing so as to make it a little more acute; I am not positive, but it may have been so.

Re-direct.

Q. The effect of heaving your wheel was to turn your head to New York?

A. Yes, sir.

Q. You say your bow lapped on the stern of the Baker; do you mean over it?

A. No, sir; getting up to her.

Q. The space between you and her continued about that time?

A. Yes, sir; until sheer was made.

Q. When you speak of the distance off her, do you mean from you or from the starboard side of your boat?

A. I mean from the starboard side of the boat.

95 Q. When you struck her stern swung under your guard?

A. Yes, sir; on the starboard side, towards us.

Adjourned to 11 o'clock to-morrow.

DECEMBER 20, 1865.

The court met, pursuant to adjournment, at 11 o'clock.

James H. Hill, a witness for the claimant, being duly sworn, testified:

Q. What is your business?

A. Engineer.

Q. And have been so how long?

A. Thirty years within ten days.
Q. Have you ever been on board the Suffolk County?
A. Yes, sir.
Q. What boat are you on now?
A. The Suffolk County.
Q. You have on her how long?
A. Ever since she has been built.
Q. You were on her at the time of the collision?
A. Yes, sir.
Q. You were not on deck at that time?
A. No, sir.
96 Q. What was the first you heard or knew in regard to the matter?
A. The pilot rang four bells; that is to slow, stop and back.
Q. Did you slow, stop and back?
A. I unhooked and backed immediately.
Q. Did you feel the jar of the collision?
A. I did, slightly, making me bend forward slightly.
Q. At the time you felt the jar of the collision, what was the condition of your engine?
A. Backing at that time.
Q. Can you give us any idea how many turns your engine had backed?
A. She was passing the third centre, nearly one-third and a half; the jar, throwing me forward, made me a little slow in passing the third centre.
Q. Did you come on deck after that?
A. No, sir; I kept backing until the pilot rang to stop backing; then I leant out of the door and saw the boat on our quarter bow.
Q. You kept on working the engine until the bell rang to stop backing?
A. Yes, sir; I never stopped backing until the bell rang.

Cross-examined.

How large is the Suffolk County?
A. Over 400 tons; 148 keel; 150 feet with her fans.
97 Q. How much beam has she?
A. Over all guards and all about 50 ft.
Q. How much over all on deck?
A. She must be about 24 or 25 ft. width beam.
Q. How much cylinder?
A. 34 inches diameter and 9 feet stroke.
Q. Is not that a very powerful engine?
A. Not for a boat of that size; it is a light one. There are other boats of the same size with cylinder of 36 and 38 inches in diameter.
Q. What are your ordinary turns?
A. We make 21 or 22 revolutions a minute, if not driven.
Q. How many revolutions were you making that morning?

A. Making about 20 revolutions. I had nothing to hurry me that morning; the tide was with us.

Q. Do you know anything about the speed of the Suffolk County?

A. Yes, sir; she is a pretty good boat on a drive; we do not drive only when we are behind time.

Q. What is your average time?

A. We have half an hour each way.

Q. How far is it?

A. Some call it 5 miles, but the right distance is about 4½ miles, I suppose, by survey.

98 Q. In the way you run it, is it not more than 5 miles?

A. No, sir, I do not think it is; I do not know how you can make it five miles.

Q. The way your boat goes?

A. That is according to how the tide is.

Q. Running your average way?

A. If you take the ebb tide from her up it will be fully five miles, because when we get out of the slip we take a turn round.

Q. When you felt this shock was it so perceptible that you felt what the matter was?

A. I thought we hit something, I did not know what.

Q. Did it make quite a jar?

A. Not very much of a jar.

Q. Sufficient to disturb you?

A. To move me forward a little.

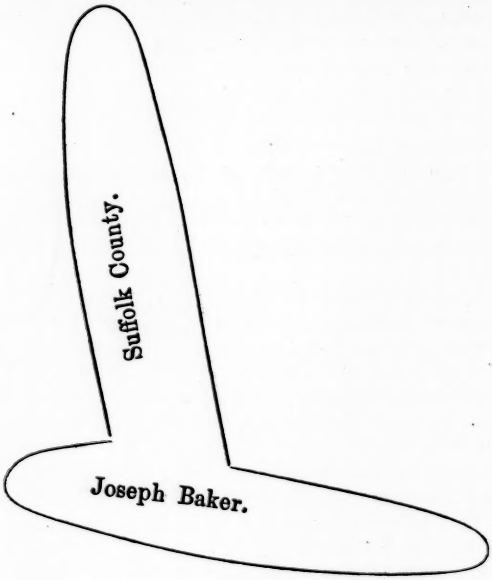
Q. When you looked out of the half door and saw the boats, in what position were they?

A. They lay in this position, as near as I could judge. She was 100 feet from me; the boats looked in this position. (Diagram marked "C" put in evidence.)

Q. (Looking at the diagram.) Does that represent the position of the vessels when you saw them after the collision?

A. Yes, sir; just as near as I can come to it.

99 *Exibit C.*



100

101 Q. How soon did you look out of the doorway after she struck?

A. Not until after the bell was rung for me to stop backing.

Q. How long was it after he rang the bell that you looked out?

A. It was some few seconds; it might be a minute or a minute and a half, I cannct tell; it was not very long.

Q. It might have been a minute or a minute and a half. I had made several turns back before touching the Baker. I felt it by the momentum when we struck her; you could feel it in the engine room.

A. From the time the bell rang until you felt the jar, can you tell me exactly how many turns back you made?

A. I made a turn and a half. I cannot tell exactly.

Q. Was it not between a turn and a quarter and a turn and a half?

A. No; between a turn and a half and two turns. I had passed the third center, which is a turn and a half.

Q. While you were unkooking your engine, did you pay any at-

tention then, so that, had there been a very slight jar, indeed, you would have felt it?

A. Certainly I would; if there was any jar that would break
102 anything, I would have felt it. Any one who has been on a steamboat and in the engine room as long as I have, knows that you can feel any jar in any part of the boat.

Q. How high is the Suffolk County out of the water, up to her decks?

A. Five feet and over.

Q. How high above the deck is the pilot house?

A. I forget the exact height between the main and the upper deck; about 14 feet.

Q. Does a train go on the Long Island railroad at that hour in the morning?

A. There is no train to meet on that trip. We had no freight; nothing except perhaps a half a dozen passengers and some market wagons. We were perfectly light.

Re-direct.

Q. Your engine was on what may be called the after part of the boat?

A. The engine is in the after end of the centre house, 51 feet long; where I stood was about 100 feet from the bow.

William Whitteman, called by the claimants, being duly sworn, stated:

Q. What is your business?

A. Spar maker, at 356 Front street.

Q. Whereabouts is that?

103 A. Alongside the sugar house, above Jackson street.

Q. Did you see this collision?

A. Yes, sir.

Q. How long prior to that did you see the boats?

A. Well, about 5 minutes, I saw the boats coming.

Q. Saw them coming up?

A. Yes, sir.

Q. At the time of the collision, and before the Suffolk County and the tug-boat came together, how was the tug headed, straight up or towards the New York shore?

A. It would be heading towards the New York shore.

Q. About where were they opposite when the collision took place?

A. As near as I could judge between Corlear and Jackson streets, about half way between.

Q. About how far out?

A. I should judge about 200 yards out.

Q. As the two boats came together, where did the tug appear to be heading for?

A. The tug appeard to be heading for Coe's store, I thought; about the point of the dock, it seemed to me.

Q. The point of Cherry street?
A. Yes, sir, the dock there.
Q. Coe's stores are at the head of Cherry street?
104 A. Yes, sir.
Q. And run on East street?
A. Yes, sir.

Cross-examined.

Q. When did you first see these two boats?
A. I first saw them on the right of Jackson street dock; I happened to come down there at the time the boats were coming along.
Q. That was about five minutes before the collision?
A. Yes, sir; I should judge, it would not take long to go that distance; it was a very short time.
Q. Where were you standing when you first saw them?
A. When I first saw the boats coming, I was standing just below Mr. Reeder's house; probably 150 feet from Jackson street, in South street.
Q. Was there any shipping lying at the foot of Jackson street ferry?
A. I did not notice particularly; it is some time ago.
Q. Was there anything on the pier back of Jackson street?
A. I did not see; there was a bark lying at the foot of Corlear street; she lay at the bulk head, I think, because the tug-boat, after the collision, swung round under the bark.
105 Q. Where were you standing when you saw the collision?
A. I was standing right by Mr. Reeder's house; I staid in the same place.
Q. What were you doing that morning?
A. I always come down on the dock in the morning, it is my habit; I had not commenced business then.
Q. What attracted your attention to these boats?
A. Seeing them come together; when I first saw them, they appeared to be both going one course.
Q. From the time you first saw them did you ever take your eyes off them until the collision?
A. No, sir; I was looking to see which was the fastest; I always do when two boats are side and side; the tug-boat appeared to be ahead when I first saw them.
Q. How much ahead?
A. I cannot describe exactly; probably half the length of this room.
Q. You could see open water between her stern and [and] bow of the Suffold Co.?
A. Yes, sir; or probably half the length of this room.
Q. When you first put eyes on them how far was the distance?
A. When I first saw them off Jackson street there was probably the width of this room between them.
106 Q. They were then running, you thought, about the same course?

A. When I first saw them they appeared to run the same course; they had not got far enough up to turn, and had not turned.

Q. Which was inside?

A. The ferry-boat was on the inside.

Q. Could you judge how far?

A. I could not exactly judge how much inside; the ferry-boat being so much higher hid the other boat.

Q. When she began to lap or come up to the stern of the tug-boat, could you then judge the exact relative positions of these boats from the fact of your being at this place on the street, and then being 200 yards off in the river, and a pier intervening?

A. I can judge the position the tug-boat was heading; she was heading towards Coe's stores.

Q. That was at the time of the collision; but at the time the Suffolk County began to lap the tug-boat, can you swear to the exact position of the boats before the collision?

A. No, I cannot swear, when I first saw them, to the exact course, because I was not out there to see.

107 Q. You say you kept your eye on them constantly; did not the Suffolk County gradually gain on the tug-boat?

A. To all appearance she must have gained; I think she did gain a little, but so little.

Q. When she came up and lapped the stern of the tug-boat, standing where you were, with the pier between you, and they 200 yards in the river, and the Suffolk County being a much larger boat, could you tell before the collision the exact position of these boats?

A. I cannot tell exactly before the collision; standing where I was I could not tell at that time.

Q. Did not, in your opinion, the Suffolk County pass on the inside, or attempt to pass on the inside of the tug-boat?

A. No; I could not see that she did.

Q. Did she attempt to pass on the outside?

A. I could not see that.

Q. You cannot say whether she attempted to pass outside or inside?

A. No, sir.

Q. When you saw the boats come together, which was on the outside?

A. The tug-boat was on the outside, of course.

Q. How much of the bow of the tug-boat came by the bow

108 of the ferry-boat at the time of the collision?

A. I should judge the after pilot-house; from where I was I could see the pilot-house clear of the ferry-boat.

Q. You could see the pilot-house of the tug-boat, and the forward part clear of the bow?

A. Yes, sir.

Q. Could you see the stern or any other portion, except the pilot-house and bow?

A. No, sir.

Q. The reason was that it was observed by the greater height of the ferry-boat?

A. Yes, sir.

Q. How long did it take for the boats to separate?

A. I cannot describe how long; I saw that they hung together until they got into the dock.

Q. Did you see the precise point on the tug-boat that the ferry-boat struck her?

A. No, sir; not the precise spot; I should judge about the engine-room.

Q. You do not know where she struck her?

A. I do not know the precise spot; I heard the crash.

Q. Where did you go after the collision?

A. I went about my business.

Q. You did not go to the tug-boat?

A. No, sir; I saw the joiner work was canted over and a
109 great amount of steam flowing off; I ascertained no one was hurt.

Q. Being about 200 yards from the pier, there was ample room for the ferry-boat to have passed on the inside, if she had seen fit?

A. That is a question I cannot answer; they might not at the time of the collision have been 200 yards out.

Q. But when you first saw them?

A. When I saw them, before the collision, they were about 200 yards out.

Q. Was there not ample room for her to go between the tug-boat and the pier?

A. I could not see that from where I stood.

Re-direct.

Q. Whether she could pass between there or not, would depend on whether the tug sheered across her course or not?

(Objected to.)

Q. If the tug-boat sheered into the dock, there was not room enough between?

(Objected to.)

By the court: Was there a space there sufficient to enable the ferry-boat to go inside clear of the tug?

A. That I cannot say, because, when they turn the point, they always near into the dock as they turn the corner.

Q. At the time they were going up, when you first saw them, you thought they were heading in the same direction?

110 Yes, sir.

Q. Was it after that the tug changed?

A. Yes, sir.

Re-cross-exam'n.

Q. Can you swear that the tug did change after that?

A. I can swear she changed, because if she didn't there could be no collision.

Q. Do you swear she did change?

A. I have already stated that she changed her course at the time of the collision.

Re-direct.

Q. That was before they got together; when was that change in her course?

A. At the time of the collision the tug-boat appeared to head towards Coe's stores.

Q. Did you see her make that sheer in before they got together, or heading that way?

A. Yes, sir.

Re-cross.

Q. How far from the tug-boat was the Suffolk County inside when you first saw them?

A. I cannot tell.

Q. You were looking at their broadside?

A. Yes, sir.

111 Daniel McGill, called by the claimants, being duly sworn testified:

Q. What is your business?

A. Fireman.

Q. Were you fireman on the Suffolk County?

A. Yes, sir.

Q. Did you hear the bells ring?

A. Yes, sir; I was in the fire-room. I started up on deck, and saw the boat backing as I got up the ladder.

Q. How could you tell she was backing?

A. I saw the cranks as I came up.

Gilbert Barker, jr., called by the claimants, being duly sworn, testified:

Q. What is your business?

A. Pilot.

Q. On what vessel?

A. On the Queen's County, 34th street ferry.

Q. What boat were you on at the time of the collision?

A. The Suffolk County.

Q. In what capacity?

A. Deck hand.

Q. When did you first see the tug?

A. About 8 or 10 seconds before the accident.

Q. What called your attention to her?

A. Hearing four bells ring.

Q. What did you do when you heard the bells ring?

112 A. I ran forward.

Q. Did you see the collision?
A. Yes, sir.
Q. Where did the Suffolk County hit the Baker.
A. In the engine room.
Q. Was that the first hit?
A. Yes, sir; the only hit I saw hit.
Q. Did she hit before that?
A. No, sir.
Q. Was any part of your vessel in contact with her before that blow?
A. No, sir.
Q. What part of your vessel hit her then?
A. Where they hook the chain on, on the starboard side.
Q. You hit here there?
A. Yes, sir.
Q. What was the effect?
A. We hit her in the engine room, and she must have swung round.
Q. Swung round how?
A. When she was hit in the engine-room, she lapped round, and she swung out towards the Brooklyn shore; the stern of Baker swung out to the Brooklyn shore a little.

Cross-examined.

Q. You mean by the stern swung out, that the bow swung out towards the Brooklyn shore?
113 Yes, sir; a little, but not much; more towards Williamsburg shore.
Q. Which way did your bow swing?
A. Not much; but our boat did heave to the New York side.
Q. So that one swung one way and the other the other?
A. Just a trifle, not much.
Q. At the time you first saw the boats how were they lying?
A. I can put them in shape.
(Makes diagram, marked Ex. D.)
Q. Diagram D represents the position of the vessels when you saw them together?
A. Yes, sir.
Q. Where were you when you heard the bells ring?
A. To the fire-room.
Q. What were you doing?
A. Hoisting ashes, at that time.
Q. What with?
A. A bucket. Mr. Gill was with me; he was down stairs shovelling ashes into the buckets. When I heard the bells I came out of the door and ran forwards.
Q. Was that the first time you had seen the Baker on that trip?
A. The first time I saw her on that trip—because I began to get the ashes out when I left the ship below.

114 Q. When you got near the bow the boats were lying in th[illegible]rs, position? [illegible]r

A. They had not hit then.

Q. How long did it take you to go to the bow of the boat?

A. I did not go to the bow; I stopped four feet from the centre house; when I saw the position I stopped; it took me four seconds to go there.

Q. How far were the boats apart at that time?

A. It might be three-fourths across this room.

Q. Could you have jumped on to the deck of the Baker from the Suffolk County?

A. Not at that time.

Q. The first place you struck the Baker, you are sure, was in the engine room?

A. Yes, sir; I am sure.

Q. You struck her, you say, with your starboard bow?

A. Yes, where we hook the chain on, about 6, 7, or 8 feet from the rudder pin.

Q. How far did the stern of the Baker lap on to the side of the ferry-boat?

A. I cannot say; all I know is that the ferry-boat stove in the cabin of the Baker, and then came along.

Q. But she struck and seemed to glide right along?

Q. Did you see the collision?
A. Yes, sir.
Q. Where did the Suffolk County hit the Baker.
A. In the engine room.
Q. Was that the first hit?
A. Yes, sir; the only hit I saw hit.
Q. Did she hit before that?
A. No, sir.
Q. Was any part of your vessel in contact with her before that blow?
A. No, sir.
Q. What part of your vessel hit her then?
A. Where they hook the chain on, on the starboard side.
Q. You hit here there?
A. Yes, sir.
Q. What was the effect?
A. We hit her in the engine room, and she must have swung round.
Q. Swung round how?
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Cross-examined.

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A. Not much; but our boat did heave to the New York side.
Q. So that one swung one way and the other the other?
A. Just a trifle, not much.
Q. At the time you first saw the boats how were they lying?
A. I can put them in shape.
(Makes diagram, marked Ex. D.)
Q. Diagram D represents the position of the vessels when you saw them together?
A. Yes, sir.
Q. Where were you when you heard the bells ring?
A. To the fire-room.
Q. What were you doing?
A. Hoisting ashes, at that time.
Q. What with?
A. A bucket. Mr. Gill was with me; he was down stairs shovelling ashes into the buckets. When I heard the bells I came out of the door and ran forwards.
Q. Was that the first time you had seen the Baker on that trip?
A. The first time I saw her on that trip—because I began to get the ashes out when I left the ship below.

114 Q. When you got near the bow the boats were lying in that position?

A. They had not hit then.

Q. How long did it take you to go to the bow of the boat?

A. I did not go to the bow; I stopped four feet from the centre house; when I saw the position I stopped; it took me four seconds to go there.

Q. How far were the boats apart at that time?

A. It might be three-fourths across this room.

Q. Could you have jumped on to the deck of the Baker from the Suffolk County?

A. Not at that time.

Q. The first place you struck the Baker, you are sure, was in the engine room?

A. Yes, sir; I am sure.

Q. You struck her, you say, with your starboard bow?

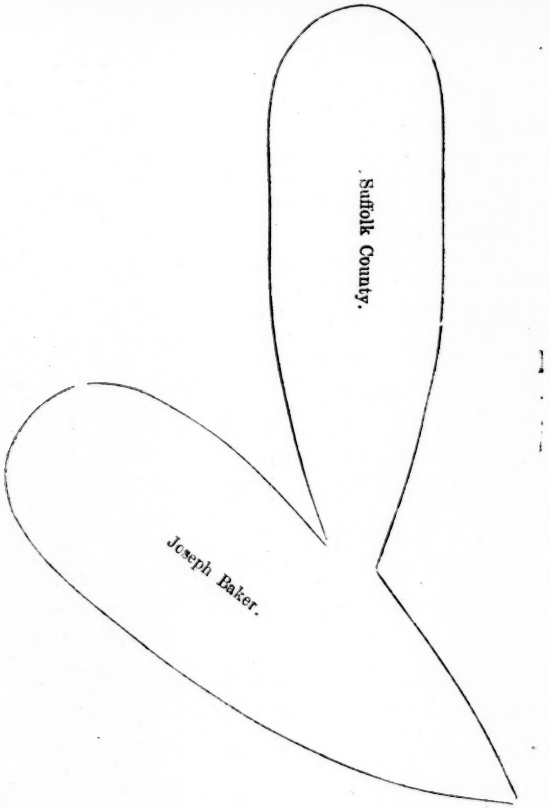
A. Yes, where we hook the chain on, about 6, 7, or 8 feet from the rudder pin.

Q. How far did the stern of the Baker lap on to the side of the ferry-boat?

A. I cannot say; all I know is that the ferry-boat stove in the cabin of the Baker, and then came along.

Q. But she struck and seemed to glide right along?

115 *Exhibit D.*



16 Endorsed: U. S. District Court. Charles E. Jayne, &c., vs. Steamboat Suffolk County, &c. Exhibits.

117 A. She struck and swung her stern; as the bow hit the Baker, the Baker swung a little.

Q. That blow swung the bow of the Baker out towards the Brooklyn shore?

A. A trifle.

William Freestone, by the complainants. was duly sworn and testified:

Q. What is your business?

A. Pilot on the South 7th street and Rosevelt street ferry-boats.

Q. How long have you been on that line?

A. I have been working for the company the last 18 or 19 years, the Williamsburg ferry, either to Peck slip or to Rosevelt street, or James slip.

Q. How many trips do you make up or down?

A. That depends upon how many vessels there are in the river; forty minutes is the general average for the trip each way.

Q. Do you recollect the morning of this collision?

A. Yes, sir.

Q. What vessel were you on board of?

A. I cannot exactly say whether it was the "Superior," the "George Law," or the Washington."

118 Q. When you got straitened out and going along up, did you see the "Joseph Baker" and the "Suffolk County?"

A. I saw the Baker.

Q. How did you go with reference to them?

A. I went along up about east and by south; the "Baker" was nearly ahead of me, if anything a little to the southeast, towards the middle of the river.

Q. And how was the "Suffolk County?"

A. I had to look over my shoulder to see the "Suffolk County;" she was in-board of me, on the port side of me.

Q. If you had all continued that course would you have passed inside of the Baker?

A. We would both have passed inside of the "Joseph Baker" if the "Baker" had kept her course.

Q. What did the "Baker" first do after that?

A. She kept on until she got pretty near Bridge street ferry, or between that and Jackson street ferry; then she inclined a little towards New York, so much so that I put my helm a-port, to go outside of her; she then continued on her course until she got nearly abreast of Corlear's Hook, when she inclined in; that was immediately as I passed the "Baker;" I did not see anything then, until I heard the stroke of the collision, when I looked over my

119 shoulder and saw the "Joseph Baker" under the bow of the "Suffolk County;" I had just passed.

Q. Before the collision did you see her, after she had inclined still further to the New York side?

A. Yes, sir.

Q. About what time was it she made the further inclination?

A. My bow got abreast of her; she was then inside of me; she was then nearly abreast of Corlear's Hook, between that and Jackson ferry.

Q. How far was the Suffolk County behind her then?

A. I cannot tell exactly the distance; I had taken my eye off the "Suffolk County" just previous to that.

Q. How near had they been together prior to that time?

A. They were some distance apart. I was nearly between the "Suffolk County" and the "Baker." Baker nearly ahead.

Q. As you passed the "Baker," how nearly had the "Suffolk County" got up to her?

A. If I had drawn a line across the river, I suppose the "Baker" was about the length of the ferry-boat from the "Suffolk County."

Q. And as you passed her this additional change of the "Baker" took place?

A. Yes, sir; she inclined more in to New York.

120 Q. She was heading for where?

A. I think between the head of Water street, where Coe's stores are, or about two doors to the west.

Q. And your boat got entirely by the "Baker" when the collision took place?

A. Not quite; when I heard the stroke I stopped my boat and looked around.

Q. How far off was the Baker at that time?

A. A small angle. I think the bow of my boat was a little past the line of these two boats; I am not exactly certain.

Q. The Baker being on the New York side of you?

A. Yes, sir. I was then heading southeast, about.

Q. As they had their straight course up before any of these changes of the "Baker," were you in a position to look up distinctly between the Baker and Suffolk County?

A. I was in a position to see the Joseph Baker, and if I looked this way I could see the Suffolk County.

Q. And your recollection is, that you could have passed inside of the Baker, and outside of the Suffolk County, as you were then running?

A. I intended that course.

121 *Cross-examined.*

Q. When did you first see the Suffolk County?

A. I think when I first started, a little after me; her slip is two docks above me.

Q. Is she a faster or slower boat than yours?

A. Sometimes a little faster; sometimes about the same speed; it depends on the load.

Q. Where was the Baker when you came out?

A. Going by my slip, in the middle of the river; as I came out, a little more towards Brooklyn, if anything.

Q. How far were you ahead of the Suffolk County when you got on your course?

A. When I got on my course I looked over my shoulder and saw the Suffolk County; I think her bows were near my after quarter.

Q. How far was the Baker ahead of you at that time?

A. I think maybe the length of my boat; maybe a little over; my boat is 162 feet long.

Q. And how far on the outside?

A. She was just far enough on the outside for me to take the range of my slip, South Seventh st.; she being on the outside I could clear her if she kept her course; there was room enough to do that.

122 Q. Are you faster than the Baker?

A. I have seen the Baker beat us, and I have beaten the Baker.

Q. Were you gaining on her that morning?

A. I was a little.

Q. Did you slow at all to go on the outside of her?

A. I do not think I did; I put my wheel hard aport; when the Baker sheered a little it made me alter my reckoning; I had to go outside of her, and then to swing hard back again to get into my slip. I put my wheel aport to get on the outside.

Q. How far was the Baker off when you passed?

A. She was half a length of my boat.

Q. Did he sheer to give you more room?

A. I do not know that he did; he did not look towards me.

Q. He continued his course?

A. At that angle he did, I believe; I do not know where he was bound.

Q. When you passed her that morning, were you still pointing to your ferry?

A. I had to swing back again; my position was on a point to the northeast of east.

Q. Did you watch him all the time?

123 A. I did, previous to my getting up to him, but did not, after that, until I heard them strike. I do not know whether the Baker sheered in or out after that. Immediately they struck, I looked; the Baker's bow was then pointing in towards the New York shore a little.

Q. Did you ever see the bow of the Baker swing out towards the Brooklyn shore?

A. When the collision occurred, I looked round and saw the bow of the ferry-boat into the side of the Baker, into the side of the engine house, or the stairs that goes below; I then saw the Baker swing round her stern under the guards of the ferry-boat, and her bow swung towards Williamsburgh.

Re-direct.

Q. The stern of the tug swung into wards the guard of the ferry-boat?

A. Yes, sir.

Q. When they came together, how near to New York side was the bow of the Baker pointing?

A. I did not see them come together.

Q. Just as you heard the noise and looked round, how was the Baker pointing?

A. About two doors to the eastward of Coe's stores.

Q. Was that the last way you said her pointing?

A. About the same position.

Q. (By the court.) How was it as to the room between the

124 Baker and the New York shore at the time of the collision?

A. There was not room for the Suffolk county to go between, after I saw the collision. He could not have swung into the eddy, with the ferry-boat, and got out again to clear the bark.

Re-cross.

Q. How far were the boats out in the stream when you saw them together?

A. The river is about 660 yards wide. I should she was 200 or 150 yards clear of the end of Corlear's Hook, but there is a dock below that runs further out; she was about 150 yards out, nearly on the edge of the eddy.

Q. You had no difficulty in going on the outside of the Baker?

A. No, sir.

125 William H. Mead, recalled by libellants; examined by Mr. Scudder:

Q. Do you know Mr. Baker, the pilot of the Suffolk county?

A. I know him by sight. I never had any acquaintance with him.

Q. Did you have any conversation with him?

A. I was up in the office of the ferry company once, and he was present.

Q. State what he said on that occasion.

A. The question was brought up whether he was steering or not; he made a statement that he might be fixing his fires. I told him there was no one at the wheel; he was not positive, and would not make the statement that he was fixing it, but he said he might be fixing the fire in the stove.

Q. Did he say anything further concerning seeing you, or your boat?

A. He did not say whether he saw me or not; he made the statement the difference that I was outside of him; he said I was one length ahead of him, and two lengths outside of him, on the starboard side.

Cross-examined.

Q. He did claim that you were outside of him?

A. He claimed that I was one length ahead of him, and two
126 lengths outside of him.

Q. Did he claim that you had sheered across his bow?

A. Certainly, he made that statement there.

Q. Have you brought your license?

A. Yes, sir. (Produces license.)

Q. This is not the license you had at that time?

A. No, sir; it is an exact copy.

Q. It is not the license you had at the time?

A. No, sir; I can produce it.

Q. Did not Mr. Barker contend that the collision occurred from your sheering across his track?

A. Certainly he did; that is no more than natural.

Re-direct.

Q. Did he say anything about his rising and seeing you in front of him?

(Objected to; excluded.)

127 At a stated term of the District Court of the United States for the southern district of New York, held at the United States court-rooms, in the city of New York, on Wednesday, the ninth day of May, in the year of our Lord one thousand eight hundred and sixty-six.

Present: The Honorable Sam'l R. Betts, district judge.

CHARLES E. JAYNE *& al.*
vs.
THE STEAM FERRY-BOAT "SUFFOLK COUNTY," her tackle, &c. } 18–269.

This case having been heard on the pleadings and proofs, and argued by the advocates for the respectives parties, and due deliberation being had in the premises, it is now ordered, adjudged and decreed by the court, that the libellants recover in this action against the steam ferry-boat Suffolk County, her tackle, &c., the damages by them sustained by reason of the collision in the pleadings mentioned, together with their costs to be taxed; and that it be referred to a commissioner of this court to ascertain and compute the amount of such damages, and report thereon to this court with all convenient speed.

SAM'L R. BETTS.

128 Endorsed: United States District Court for the southern district of New York. C. E. Jayne vs. The st. ferry-boat Suffolk County. Townsend Scudder p lbl't, Beebe Dean & Donohue, proctor for cl'ts. Decree. Filed the 9th day of May, 1866.

133 At a stated term of the District Court of the United States of America for the southern district of New York, held at the United States court-rooms, in the city of New York, on Tuesday, the 2d day of Ap'l, in the year of our Lord one thousand eight hundred and sixty-seven.

Present: The Honorable Sam'l R. Betts, district judge.

C. E. JAYNE *& al.*
v.
THE STEAM FERRY-BOAT SUFFOLK COUNTY her tackle, &c.

The time to file exceptions to the commissioner's report by the claimants having expired, and no exceptions having been filed thereto:

On reading the report on file of John A. Osborne, esq., United States commissioner, to whom the above matter was referred, by which there is reported due the libellants for damages in the pleadings mentioned the sum of twenty-six hundred and thirteen 62-100 dollars, on motion of Townsend Scudder, esq., proctor for the libellant, it is ordered that the report be in all things confirmed, and that the libellant recover in this action against the steam ferry-boat, etc.,

Re-cross.

Q. How far were the boats out in the stream when you saw them together?

A. The river is about 660 yards wide. I should she was 200 or 150 yards clear of the end of Corlear's Hook, but there is a dock below that runs further out; she was about 150 yards out, nearly on the edge of the eddy.

Q. You had no difficulty in going on the outside of the Baker?

A. No, sir.

125 William H. Mead, recalled by libellants; examined by Mr. Scudder:

Q. Do you know Mr. Baker, the pilot of the Suffolk county?

A. I know him by sight. I never had any acquaintance with him.

Q. Did you have any conversation with him?

A. I was up in the office of the ferry company once, and he was present.

Q. State what he said on that occasion.

A. The question was brought up whether he was steering or not; he made a statement that he might be fixing his fires. I told him there was no one at the wheel; he was not positive, and would not make the statement that he was fixing it, but he said he might be fixing the fire in the stove.

Q. Did he say anything further concerning seeing you, or your boat?

A. He did not say whether he saw me or not; he made the statement the difference that I was outside of him; he said I was one length ahead of him, and two lengths outside of him, on the starboard side.

Cross-examined.

Q. He did claim that you were outside of him?

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126 lengths outside of him.

Q. Did he claim that you had sheered across his bow?

A. Certainly, he made that statement there.

Q. Have you brought your license?

A. Yes, sir. (Produces license.)

Q. This is not the license you had at that time?

A. No, sir; it is an exact copy.

Q. It is not the license you had at the time?

A. No, sir; I can produce it.

Q. Did not Mr. Barker contend that the collision occurred from your sheering across his track?

A. Certainly he did; that is no more than natural.

Re-direct.

Q. Did he say anything about his rising and seeing you in front of him?

(Objected to; excluded.)

127 At a stated term of the District Court of the United States for the southern district of New York, held at the United States court-rooms, in the city of New York, on Wednesday, the ninth day of May, in the year of our Lord one thousand eight hundred and sixty-six.

Present: The Honorable Sam'l R. Betts, district judge.

CHARLES E. JAYNE *& al.*
vs.
THE STEAM FERRY-BOAT "SUFFOLK COUNTY," her tackle, &c. } 18–269.

This case having been heard on the pleadings and proofs, and argued by the advocates for the respectives parties, and due deliberation being had in the premises, it is now ordered, adjudged and decreed by the court, that the libellants recover in this action against the steam ferry-boat Suffolk County, her tackle, &c., the damages by them sustained by reason of the collision in the pleadings mentioned, together with their costs to be taxed; and that it be referred to a commissioner of this court to ascertain and compute the amount of such damages, and report thereon to this court with all convenient speed.

SAM'L R. BETTS.

128 Endorsed: United States District Court for the southern district of New York. C. E. Jayne vs. The st. ferry-boat Suffolk County. Townsend Scudder p lbl't, Beebe Dean & Donohue, proctor for cl'ts. Decree. Filed the 9th day of May, 1866.

133 At a stated term of the District Court of the United States of America for the southern district of New York, held at the United States court-rooms, in the city of New York, on Tuesday, the 2d day of Ap'l, in the year of our Lord one thousand eight hundred and sixty-seven.

Present: The Honorable Sam'l R. Betts, district judge.

C. E. JAYNE *& al.*
v.
THE STEAM FERRY-BOAT SUFFOLK COUNTY her tackle, &c.

The time to file exceptions to the commissioner's report by the claimants having expired, and no exceptions having been filed thereto:

On reading the report on file of John A. Osborne, esq., United States commissioner, to whom the above matter was referred, by which there is reported due the libellants for damages in the pleadings mentioned the sum of twenty-six hundred and thirteen 62-100 dollars, on motion of Townsend Scudder, esq., proctor for the libellant, it is ordered that the report be in all things confirmed, and that the libellant recover in this action against the steam ferry-boat, etc.,

the amount reported due, together with their costs to be taxed, and that said steam ferry-boat be condemned therefor.

And on like motion it is further ordered, that out of the proceeds of the stipulation of the claimants for costs and value, when paid into the registry of the court, the clerk of this court pay to the libellants, or their proctor, the amount reported due, together with the taxed costs.

And on like motion of Townsend Scudder, proctor for the libellant, it is further ordered, that unless an appeal be taken to this decree within the time limited and prescribed by the rules and practice of this court, that the clerk, after deducting the taxed costs of the officers of court, distribute the proceeds in satisfaction of this decree.

SAM'L R. BETTS.

TOWNSEND SCUDDER,
Per Libl'ts.

134 Endorsed: United States District Court for the southern district of New York. C. E. Jayne vs. The st. ferry-boat Suffolk Co., her tackle, &c., , proctor for libel't. Final decree in rem. on confirmation of commissioner's report. Filed and entered the 2d day of Ap'l, 1867.

135 U. S. Dist. Court.

C. E. JAYNE *& al.*
vs.
THE ST'BT SUFFOLK CO., &C.

Please to take notice that the claimants intend to appeal from the decree herein and every part thereof.

Dated Ap'l 2, 1867.

Yours, &c.,

BEEBE, DEAN & DONOHUE,
For Cl'mts.

To Scudder & Carter, esq., pr. for libl'nts.

Endorsed: 18-269. U. S. Dist. Court. Chas. E. Jayne & al. v. S. B. Suffolk Co. No. of appeal. Filed Ap'l 2, 1867.

136

137 Circuit Court of the United States of America for the southern district of New York, in the second circuit.

Bond for costs.

CHARLES E. JAYNE *et al.*, lib'l'nts, appellees,
vs.
THE ST'BOAT SUFFOLK COUNTY, her tackle, &c.

Know all men by these presents, that we, the E'st River Ferry Company, and Anthony Voorhees, are held and firmly bound unto the

above-named libellants and appellees, in the sum of fifty-five hundred dollars, to be paid to the said libellants, for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors and administrators, jointly and severally firmly by these presents.

Sealed with our seals, and dated the 27th day of April, in the year of our Lord one thousand eight hundred and sixty-seven.

Whereas the above-named claimants have prosecuted an appeal to the Circuit Court of the United States for the southern district of New York, in the second circuit, to reverse the decree rendered in the above-entitled suit, by the judge of the District Court of the United States for the southern district of New York:

Now, therefore, the condition of this obligation is such, that if the above-named claimants shall prosecute their appeal to effect and answer all damages and costs if they fail to make their appeal good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

EAST RIVER FERRY CO.,
[L. S.] By G. V. WINANS.
[L. S.] ANTHONY VOORHEES WINANS.

Sealed and delivered, and taken and acknowledged, this 27 day of April, 1867, before me.

JOHN A. OSBORNE.

138 UNITED STATES OF AMERICA,
Southern District of New York, ss:

Anthony Voorhees Winans, being duly sworn, deposes and says, that he resides in the eastern dist. of New York; and that he is worth the sum of eleven thousand dollars over and above all his just debts and liabilities.

ANTHONY VOORHEES WINANS.

Sworn to this 27 day of Ap'l, A. D. 1867, before me.
JOHN A. OSBORNE, *U. S. Com'r.*

Endorsed: Vol. 18, page 269. U. S. Circuit Court. Charles E. Jayne vs. The St'bt Suffolk County, her tackle, &c. Bond for costs on damage on appeal. Beebe, Dean and Donohue, proctors. Filed this 27 day of April, 1867.

139 To the Honorable the Circuit Court of the United States for the southern district of New York, in the second circuit:

The petition of appeal of the East River Ferry Company respectfully shows:

That on or about the 5th day of May, 1866, Chales E. Jayne and al. filed their libel in the District Court of the United States for the southern district of New York agst. the steam ferry-boat "Suffolk County," praying among other things that, for the causes therein

stated, the said steam ferry-boat Suffolk County should be condemned and sold to pay the damages claimed therein and costs.

That thereafter process issued on said libel, and the said steamboat attached, the appellants intervened, and bonded and filed their answer, denying the libellants' allegations, and setting up that the collision occurred through the fault of those on the said libellants' vessel.

That such proceedings were thereupon afterwards had, that
140 by the decree and order of the said court, the appellants and vessel was condemned; and the libellants had a decree on the 2d day of April, 1867, for the sum of twenty-six hundred and thirteen 62-100 dollars, as will more fully and at large appear by the record of said libel, answer, process and decree, to which appellant pray leave to refer.

That the appellant claims and insists that the whole of the said decree and every part thereof is erroneus, and should be reversed, and the appellant appeals from the whole of said decree and every part thereof, and asks that this court would be pleased to hear the said cause anew, on new proofs and the proofs already taken, and would reverse and annul the decree below, and each and every part thereof, and that the claimant and appellant be restored to all things it has lost by said decree.

EAST RIVER FERRY CO.
BEEBE, DEAN & DONOHUE,
Proctors.

Endorsed: 18-269. U. S. Circ't Ct., S. D. N. Y. St'bt
141 Suffolk Co. ads. Chas. E. Jayne et al. Petition of appeal. Beebe, Dean & Donohue, pr'ct'rs app'ts.

I admit due service of a copy of the within petition of appeal, dated May 7, '67.

TOWNSEND SCUDDER,
P'r Resp'd'ts.

Filed May 7, '67.

142

143 At a stated term of the Circuit Court of the United States of America for the southern district of New York, in the second circuit, held at the City Hall, in the city of New York, on Wednesday, the 13 day of May, in the year of our Lord one thousand eight hundred and sixty-eight.

Present: The Honorable Sam'l Nelson, associate justice Supreme Court.

CHARLES E. JAYNE AND OR'S, lib'ts and appellees,
vs.
THE ST'B'T SUFFOLK COUNTY, &c., clm'ts and appl'nts.

The appeal from the decree of the Dist. Court coming on to be heard, Mr. T. Scudder reads Apostles, and argues on behalf lib'l'nt

and appellees. Mr. C. Donohue is heard on the part of the resp'd'ts and appellants. Mr. Scudder is heard in reply.

Cur. adv. vult.

144

145 At a stated term of the Circuit Court of the United States of America for the southern district of New York, in the second circuit, held at the City Hall, in the city of New York, on Friday, the 2d day of October, in the year of our Lord one thousand eight hundred and sixty-eight.

Present: The Honorable , an associate justice of the Supreme Court of the United States.

CHARLES E. JAYNE AND OTHERS
vs.
THE STEAM FERRY-BOAT SUFFOLK COUNTY, HER tackle, apparel and furniture.

The above cause coming on to be heard upon the appeal of the East River Ferry Company, claimant of the steam ferry-boat "Suffolk County," and having been argued by Townsend Scudder, esq., on behalf of the libellant, and by Chas. Donohue, esq., on behalf of the claimant, and due deliberation having been had thereon, now, on motion of Townsend Scudder, proctor for the libellant, it is ordered, adjudged and decreed that the decree of the District Court herein in favor of the libellant be, and the same hereby is confirmed, with costs to be taxed by the clerk in favor of the said libellant.

S. NELSON.

146

147 To the Honorable the Supreme Court of the United States:

The petition of appeal of Charles E. Jayne, John Schenck, Wm. H. Cranston, Lewis S. Davis, Edward N. Smith, Samuel G. Fairchild, respectfully shows:

That on the fifth day of May, 1864, Charles E. Jayne and others filed their libel in the District Court of the United States for the southern dist. of New Y'k against the steam ferry-boat Suffolk County, her engines, tackle, apparel and furniture, setting forth that while on a passage on the East river, New Y'k, the said libellant's boat, the Joseph Baker, was injured by a collision which occurred on the 27 day of Feb'y, 1864, between the said steamboats Joseph Baker and Suffolk County, under the circumstances set up in the libel.

That the claimants duly intervened and gave a bond, and said vessel was duly delivered to them; that the claimants duly answered,
148 denying the statements of the libel, and setting out that the collision occurred under the circumstances set out in the an-

swer, and without fault on the part of the Suffolk County or those on board of her.

That such proceedings were had that the cause was tried oefore the District Court of the United States for the southern district of New York, and a decree rendered on the 2d day of April, 1867, condemning the Suffolk County for the damages and awarding the libellants the sum of $2,613 62 and costs.

That from that decree an appeal was taken to the Circuit Court of the United States for the southern district of New York by these claimants, and such proceedings were had that on the third day of October, 1868, the said Circuit Court did affirm the said judgment.

That the claimants are advised and insist that the said decrees of the District and Circuit Court respectively are erroneous, in
149 so much and in all such parts as they hold the Suffolk County or the claimants in fault, or liable in any way for damages for such collision or the injury to the libellant, and they appeal to the Supreme Court of the United States therefor.

Wherefore the claimants and appellants, petitioners, pray that the said Supreme Court may proceed to hear the said cause on the pleadings and proof taken therein, and to revise and annul said decree of the Circuit Court, in so much and such parts thereof as in any way holds the Suffolk County liable or responsible for any damages of the libellants by the collision in the pleadings mentioned, and such part or parts as in anywise decrees or orders the payment of any damages by by the said "Suffolk County," or the claimants thereof, for any damages sustained by the libellants, Charles E. Jane and others.

And they will ever pray, &c.

BEEBE, DONOHUE & COOKE,
Proctors.

150 Endorsed: U. S. Circuit Court. Charles E. Jayne v. St. ferry-boat Suffolk Co. Petition on appeal. Beebe, Donohue & Cooke, proctors.

We admit due service of the within.

SCUDDER & CARTER,
Pr. for Resp'd'ts.

151 Supreme Court of the United States of America for the southern district of New York, in the second circuit.

Bond for costs and damages on appeal.

CHARLES E. JAYNE *et al.*, lib'l'nt and appellees,
vs.
THE ST'BOAT SUFFOLK COUNTY.

Know all men by these presents, that we, the East River Ferry Company, and J. C. Winans, are held and firmly bound unto the

above-named libellants and appellees in the sum of six thousand dollars, to be paid to the said libellants, for the payment of which well and truly to be made we bind ourselves, and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated the 14th day of Nov., in the year of our Lord one thousand eight hundred and sixty-eight.

Whereas the above-named claimants and appellants have prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled suit, by the judge of the Circuit Court of the United States for the southern district of New York, in the 2d circuit, now, therefore, the condition of this obligation is such that if the above-named claimants shall prosecute their appeal to effect, and answer all damages and costs if they fail to make their appeal good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

EAST RIVER FERRY CO.
By A. V. WINANS.
J. C. WINANS.

Sealed and delivered, and taken and acknowledged this 14th day of Nov., 1868, before me—

KENNETH G. WHITE,
U. S. Commissioner for S. Dist. New York.

152 UNITED STATES OF AMERICA,
Southern District of New York, ss:

A. V. Winans and J. C. Winans, being duly sworn, each depose and say that he is worth the sum of twelve thousand dollars over and above all his just debts and liabilities.

A. V. WINANS.
J. C. WINANS.

Sworn to this 14th day of Nov., A. D. 1868, before me.
KENNETH G. WHITE,
U. S. Com.

I approve of the sufficiency of the sureties to the within bond.
N. Y., Nov. 1868.

J. NELSON.

Endorsed: U. S. Circuit Court. C. E. Jayne vs. The st'b't Suffolk Co. Filed this 14th day of Nov., 1868.

153 By the Honorable Samuel Blachford, one of the judges of the Circuit Court of the United States for the southern district of New York, in the second circuit, to Charles E. Jayne, John Schenck, William H. Cranston, Lewis L. Davis, Edward N. Smith and Samuel G. Fairchild:

Whereas the East River Ferry Company lately appealed to the Supreme Court of the United States from a decree rendered by the

swer, and without fault on the part of the Suffolk County or those on board of her.

That such proceedings were had that the cause was tried oefore the District Court of the United States for the southern district of New York, and a decree rendered on the 2d day of April, 1867, condemning the Suffolk County for the damages and awarding the libellants the sum of $2,613 62 and costs.

That from that decree an appeal was taken to the Circuit Court of the United States for the southern district of New York by these claimants, and such proceedings were had that on the third day of October, 1868, the said Circuit Court did affirm the said judgment.

That the claimants are advised and insist that the said decrees of the District and Circuit Court respectively are erroneous, in
149 so much and in all such parts as they hold the Suffolk County or the claimants in fault, or liable in any way for damages for such collision or the injury to the libellant, and they appeal to the Supreme Court of the United States therefor.

Wherefore the claimants and appellants, petitioners, pray that the said Supreme Court may proceed to hear the said cause on the pleadings and proof taken therein, and to revise and annul said decree of the Circuit Court, in so much and such parts thereof as in any way holds the Suffolk County liable or responsible for any damages of the libellants by the collision in the pleadings mentioned, and such part or parts as in anywise decrees or orders the payment of any damages by by the said "Suffolk County," or the claimants thereof, for any damages sustained by the libellants, Charles E. Jane and others.

And they will ever pray, &c.

BEEBE, DONOHUE & COOKE,
Proctors.

150 Endorsed: U. S. Circuit Court. Charles E. Jayne v. St. ferry-boat Suffolk Co. Petition on appeal. Beebe, Donohue & Cooke, proctors.

We admit due service of the within.

SCUDDER & CARTER,
Pr. for Resp'd'ts.

151 Supreme Court of the United States of America for the southern district of New York, in the second circuit.

Bond for costs and damages on appeal.

CHARLES E. JAYNE *et al.*, lib'l'nt and appellees,
vs.
THE ST'BOAT SUFFOLK COUNTY.

Know all men by these presents, that we, the East River Ferry Company, and J. C. Winans, are held and firmly bound unto the

above-named libellants and appellees in the sum of six thousand dollars, to be paid to the said libellants, for the payment of which well and truly to be made we bind ourselves, and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated the 14th day of Nov., in the year of our Lord one thousand eight hundred and sixty-eight.

Whereas the above-named claimants and appellants have prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled suit, by the judge of the Circuit Court of the United States for the southern district of New York, in the 2d circuit, now, therefore, the condition of this obligation is such that if the above-named claimants shall prosecute their appeal to effect, and answer all damages and costs if they fail to make their appeal good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

EAST RIVER FERRY CO.
By A. V. WINANS.
J. C. WINANS.

Sealed and delivered, and taken and acknowledged this 14th day of Nov., 1868, before me—

KENNETH G. WHITE,
U. S. Commissioner for S. Dist. New York.

152 UNITED STATES OF AMERICA,
Southern District of New York, ss:

A. V. Winans and J. C. Winans, being duly sworn, each depose and say that he is worth the sum of twelve thousand dollars over and above all his just debts and liabilities.

A. V. WINANS.
J. C. WINANS.

Sworn to this 14th day of Nov., A. D. 1868, before me.
KENNETH G. WHITE,
U. S. Com.

I approve of the sufficiency of the sureties to the within bond.
N. Y., Nov. 1868.

J. NELSON.

Endorsed: U. S. Circuit Court. C. E. Jayne vs. The st'b't Suffolk Co. Filed this 14th day of Nov., 1868.

153 By the Honorable Samuel Blachford, one of the judges of the Circuit Court of the United States for the southern district of New York, in the second circuit, to Charles E. Jayne, John Schenck, William H. Cranston, Lewis L. Davis, Edward N. Smith and Samuel G. Fairchild:

Whereas the East River Ferry Company lately appealed to the Supreme Court of the United States from a decree rendered by the

Circuit Court of the United States for the southern district of New York, made in favor of you, the said Charles E. Jayne, John Schenck, William H. Cranston, Lewis L. Davis, Edward N. Smith, and Samuel G. Fairchild, against the steam ferry-boat Suffolk County, and has filed the security required by law:

You are, therefore, hereby cited to appear before the said Circuit Court, at the city of New York, on the first Monday of December next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand, at the city of New York, in the southern district of New York, in the second circuit, the twelfth day of October, in the year of our Lord one thousand eight hundred and sixty-eight, and of the independence of the United States the .

SAMUEL NELSON.

154 We admit due service of the within.
Oct. 10, 1868.

SCUDDER & CARTER,
Proctors for Respondents.

U. S. SUPREME COURT.

No. 132.

EAST RIVER FERRY COMPANY, CLAIMANTS OF THE STEAMBOAT "SUFFOLK COUNTY," &c., APPELLANT,

vs.

CHARLES E. JAYNE AND OTHERS, LIBELLANTS AND APPELLEES.

BRIEF AND POINTS FOR APPELLANT.

U. S. Supreme Court.

EAST RIVER FERRY COMPANY, CLAIMANTS OF THE STEAMBOAT "SUFFOLK COUNTY," &c.,

Appellant,

vs.

CHARLES E. JAYNE AND OTHERS,

Libellants and Appellees.

BRIEF AND POINTS FOR APPELLANT.

C. DONOHUE,

Counsel for Appellants.

New-York:
GEORGE F. NESBITT & CO., PRINTERS,
COR. PEARL AND PINE STREETS.

1870.

U. S. Supreme Court.

EAST RIVER FERRY CO., CLAIMANTS OF THE STEAMBOAT "SUFFOLK COUNTY," &c.,
Appellant.

vs.

CHARLES E. JAYNE AND OTHERS,
Libellants and Appellees.

Brief and Points for Appellant.

This is an action for damages to the tug "Joseph Baker," by a collision occurring off the Jackson Ferry, New-York—the Court will see by a map exhibited, the points referred to by the witnesses.

In substance, the libel sets up that, see Libel, Art. 3, fol. 5 the "J. Baker" had reached, where, as the map shows, the channel rounds, and that she had commenced rounding with it, and that while in such rounding course the collision occurred. It will be seen that the cause of action is thus distinctly set up in the libel that the collision was after the "Baker" had made a change in her course, and was on an angle to the "Suffolk County" course.

The defence is, that while the "Suffolk County" was proceeding up on a course to clear the "Joseph Baker," and go on the New-York side of her, the "Baker" sheered on to the course of the "Suffolk County," not yet having reached where the channel and turns, caused the collision, see Answer, Arts. 4, 5 and 6.

It is respectfully claimed that these pleadings which have not been altered, the cause of action set up in the libel is that the "Joseph Baker" had rightfully rounded on her course, that the

"Suffolk County" came behind and ran over her, that the defence is that the "Joseph Baker" without cause and without seeing where she was, sheered on the track of the "Suffolk County," and caused the collision.

The evidence for the libellant is that of two men on board of her, who only saw us when a few feet apart, and a man on a boat on the other side of the river, who only saw us as a boat passed away between, and within twenty yards of each other. They also produce some evidence as to the mark on her to deduce something of the direction of the blow.

On the trial of the cause, the witnesses on the tug denied she had got to the place where the channel rounded, also that she had rounded.

The decree below was for the libellants, and claimants appeal.

FIRST.—It is respectfully submitted, the cause must be tried on the issues raised on the pleadings. Such is the law, and such is common sense. The parties come into Court prepared to meet the issues raised, and to make the proof necessary to meet the case, as made in the pleadings. Any other rule would be to simply make pleadings a snare to the parties, and render pleadings entirely useless; worse, in fact, than useless.

SECOND.—In this case the admitted facts on the part of the libellants, and which the claimants do not deny, are that the "Joseph Baker" had been, prior to reaching Jackson Street, headed parallel with the end of the pier; that she then sheered, as the libel says, *to follow the course of the river, but,* as the claimants say, *without such cause directly on to the course* of the "Suffolk County."

The parties came into Court on this issue, and what is the evidence.

1. As to where she had got to at the time of collision—had she got to the place where a sheer was necessary for the purpose of following the channel?
Their own Captain says, page 6, fol. 22:
"Q. Had you changed your course up to that time?
"A. *I had not. I had no occasion to.*"

2. Now their Captain denying he had reached the bend or turn, did she in fact sheer, and to what extent.

1. Her Captain says he did not (see above), page 2, fol. 22.

2. Her witness on the Jackson Street ferry-boat says, page 22, fol. 52:

A. No, sir; they were off the slip when I first saw them.

Q. Did you not swear to-day that when you first had your attention called to them, the boats were on the turn?

A. The boats were on the curve, (Whittmore).

Q. At the time of the collision, and before the "Suffolk County" and the tug boat came together, how was the tug headed, straight up, or towards the New-York shore?

A. It would be heading towards the New-York shore.

Q. About where were they opposite when the collision took place?

A. As near as I could judge between Corlear and Jackson Streets; about half way between.

Folio 103, page 45.

Q As the two boats came together, where did the tug appear to be heading for?

A. The tug appeared to be heading for Coe's store I thought; about the point of the dock it seemed to me.

Q. The point of Cherry Street?
A. Yes, sir, the dock there.

3. Our pilot says, fol. 78:

I saw the "Baker" giving a rank sheer in towards me; I saw there was going to be a collision of the two boats.

4. Our man on deck gives a diagram, at folio 99.

The pilot on the South 7th Street boat says: (Read his testimony from fol. 117 to 120.)

Now, can there be any doubt that she did sheer? If, therefore, it is true that she had not reached the place where a sheer was necessary, and yet did sheer, can there be any question left in the case?

SECOND.—The rule of law is well settled in the matter. A pursuing vessel shall take the proper mode of clearing a vessel ahead, and passing her properly; but the rule is equally clear that such leading vessel shall do nothing to embarrass the vessel astern. Here, we say, it is clear that the leading vessel did embarrass our vessel.

Take the fact that they had not reached the place of sheering, that their captain says he had not yet sheered, and the evidence cited. Can there be a question that she did so sheer, and embarrass us?

THIRD.—The parties should be confined to their pleadings, and those pleadings are for a collision, after the "Baker" had taken a sheer, while, in fact, the whole case shows that she had not arrived at the rounding point, the pleadings admitting such

a rounding or sheer, and the evidence shows no necessity for it sustains our case that she did not sheer, and the evidence fails to show necessity for what she did, the "Baker's" case fails. It is respectfully submitted that the real point between the parties on the issue was the simple one, to wit, had the "Baker" the right to sheer when she did; that the parties came into Court to meet this, and the Baker having failed in it cannot deny her sheer, and must fail in her claim.

The evidence of experts that the blow was in a particular way amounts to nothing, because how the mark was made no one saw, and it may have been made in drawing off quite as easy as in pressing on; this in fact destroys all its reliability. The evidence in fact is not admissible.

FOURTH.—The "Baker" was not paying the slightest attention to surrounding objects; made her sheer without regard to her surroundings, and, of course, is driven to her present effort to show she had not sheered to save herself. Her want of attention shows that she was badly manned and negligently sailed, and that no reliance can be placed on her testimony.

As matter of fact no one on her saw us, or heard of us, until within 50 or 60 feet of them, nor did they see surrounding objects or pay any attention to them.

Our witnesses are entitled to most credit as to the sheer, and as to the fact of its not being necessary.

1. Our witness, Freestone, on South 7th Street boat, had to pass outside of the Baker, and saw her first sheer, also saw the last sheer.

2. Our pilot stood where he could see ahead, and that he had the full chance to see.

3. One man on deck shows that before the vessels got together the "Baker" had sheered across our bows.

FIFTH.—It is no ground of recovery to say, that with the utmost vigilance the "Suffolk County" might have cleared the "Baker"; the answer to such a point is, that when, as in this case, the exigency is thrown on the "Suffolk County" by the false manœuvres of the "Baker," all she is bound to do is the best she can; this she did. It is clear that she stopped and backed as soon as she could after the "Baker's" sheer.

SIXTH.—These vessels were both employed in the purely internal commerce of the State, and the cause of the action was not within the jurisdiction of the Court.

See Gibbons *vs.* Ogden. 6 Wheaton 448
Allen *vs.* Newbury. 21 Howard 244
McGuire *vs.* Card. Id. 248

The judgment should be reversed.

C. DONOHUE,
for Appellants.

Supreme Court of the United States.

THE STEAMBOAT "SUFFOLK COUNTY,"
HER TACKLE, &c.,
THE EAST RIVER FERRY COMPANY,
Claimants—Appellants.

versus

CHARLES E. JAYNE AND OTHERS,
Appellees.

POINTS FOR APPELLEES.

The libel in this cause was filed on the 5th day of May, 1864, to recover damages sustained by the Appellees, by reason of a collision between the Ferry Boat, Suffolk County and the Steam Tug, Joseph Baker. The collision occurred on the 27th February, 1864, on the East River, in the Harbor of New York (see folio 3). The Suffolk County was a much larger and faster boat than the Joseph Baker, (see folio 13.) The libellants and appellees obtained a decree in the District Court for the Southern District of New York, for the sum of $2,613 62 (see folio 133). From this decree an appeal was taken to the Circuit Court, and, after argument, the decree of the District Court was affirmed (see folio 145.) The claimants of the Suffolk County thereupon appealed to this court (see folio 147).

Point First.—The ferry boat had abundance of room to have passed on either side of the tug (see folio 121). The river was comparatively free from vessels.

It was culpable negligence for a vessel so much larger as the Suffolk County was than the Baker, to have run so near the Baker when there was plenty of room. The tug was only about 72 tons burthen (see folio 3), whereas the Suffolk County was over 400 tons (see folio 97).

Point Second.—The Suffolk County did not give any signal whereby to denote her proximity to the Joseph Baker (see folio 22–A). It must be plain that where two boats are running in nearly the same course, the one behind can see the one ahead, although the one ahead may not be aware of the one behind, without some signal. There is no evidence in this cause to show that there was any look-out on the Suffolk County. The witness Cunningham was certainly a sufficient look-out on the Joseph Baker.

Point Third.—The gist of the defence in this cause lies in the allegation that the Joseph Baker took a sudden sheer across the bow of the Suffolk County. The evidence concerning this fact has been twice considered, and in each instance the learned courts who have so considered it have pronounced against the defence so made on the part of the claimants. It comes up now for the last time for consideration, and is the one bald fact to be substantiated by the claimants in order to justify themselves. Without going through the entire testimony, the record will show by the diagrams alone what credibility ought to be attached to the evidence. Page 30 shows the dimensions of the tug, and where in fact the blow was delivered, as shown by the testimony of the witnesses who examined the scars. These scars show that the Suffolk County, at the time that she ran into the Joseph Baker, was pursuing a course nearly parallel to that of the Baker's (see folios 64, 65, 67, 68, 74). Pages 38, 44, 52, show the ways in which the claimant's witnesses believe these boats to have come together.

It is respectfully submitted that the dumb witnesses—the wounds of the Joseph Baker—are entitled to more credit than the, perhaps, innocent mistakes of the witnesses of the claimants.

Point Fourth.—The libellants respectfully solicit this Court to affirm the decree.

TOWNSEND SCUDDER,
Counsel for Appellees.